

2482
No. 11662-11666

see vol. 2483
United States

Circuit Court of Appeals

For the Ninth Circuit.

PHILLIP HIMMELFARB,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

SAM ORMONT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

IN FOUR VOLUMES

VOLUME I

Pages 1 to 450

**Upon Appeal from the District Court of the United States
for the Southern District of California
Central Division**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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* Page numbering appearing at foot of page of original certified
Transcript of Record.

In the District Court of the United States in and
for the Southern District of California, Central
Division.

No. 19138

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAM ORMONT and

PHILLIP HIMMELFARB,

Defendants.

INDICTMENT

Count One

(Sec. 145 (b), I.R.C.; 26 U.S.C. 145 (b))

The grand jury charges:

That on or about the 15th day of March, 1945, in the Southern District of California, and within the jurisdiction of this Court, Sam Ormont and Phillip Himmelfarb did wilfully, knowingly, unlawfully and feloniously attempt to defeat and evade a large part of the income tax due and owing by Sam Ormont to the United States of America for the calendar year 1944 (1) by preparing and causing to be prepared and filing and causing to be filed with the Collector of Internal Revenue for the Sixth Internal Revenue Collection District of California a false and fraudulent income and victory tax return wherein they stated that his net income for said calendar year was the sum of \$12,174.57 for income tax [2] purposes, and that the amount of tax due and owing thereon was the sum of

\$3626.58, whereas, as they then and there well knew, his net income for the said calendar year was the sum of \$36,982.52 for income tax purposes, upon which said net income he owed to the United States of America an income tax of \$18,143.12; and (2) by concealing and attempting to conceal from the said Collector and any and all proper officers of the United States the true and correct gross and net incomes received by him during the said calendar year and the sources thereof.

Count Two

(Sec. 145 (b), I.R.C.; 26 U.S.C., 145 (b))

The grand jury further charges:

That on or about the 14th day of March, 1945, in the Southern District of California, and within the jurisdiction of this Court, Sam Ormont and Phillip Himmelfarb did wilfully, knowingly, unlawfully and feloniously attempt to defeat and evade a large part of the income tax due and owing by Phillip Himmelfarb to the United States of America for the calendar year 1944 (1) by preparing and causing to be prepared and filing and causing to be filed with the Collector of Internal Revenue for the Sixth Internal Revenue Collection District of California a false and fraudulent income tax return wherein they stated that his net income for said calendar year, computed on the community property basis, was the sum of \$4111.74 for income tax purposes and that the amount of tax due and owing thereon was the sum of \$656.00, whereas, as they

then and there well knew, his net income for the said calendar year, computed on the community property basis, was the sum of \$17,752.65, upon which said net income he owed to the United States of America an income tax of \$5843.91; and (2) by concealing and attempting to conceal from the said Collector [3] and any and all proper officers of the United States the true and correct gross and net incomes received by him during the said calendar year and the sources thereof.

Count Three

(Sec. 145 (b), I.R.C.; 26 U.S.C., 145 (b))

The grand jury further charges:

That on or about the 15th day of March, 1944, in the Southern District of California, and within the jurisdiction of this Court, Sam Ormont did wilfully, knowingly, unlawfully and feloniously attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1943 (1) by preparing and causing to be prepared and filing and causing to be filed with the Collector of Internal Revenue for the Sixth Internal Revenue Collection District of California a false and fraudulent income and victory tax return wherein he stated that his net income for said calendar year was the sum of \$11,934.56 for income tax purposes and \$12,194.62 for victory tax purposes and that the amount of income and victory tax due and owing thereon was the sum of \$3228.25, whereas, as he then and there well knew, his net

income for the said calendar year was the sum of \$30,512.86 for income tax purposes and \$30,587.05 for victory tax purposes, upon which said net income he owed to the United States of America an income and victory tax of \$13,461.29; and (2) by concealing and attempting to conceal from the said Collector and any and all proper officers of the United States the true and correct gross and net incomes received by him during the said calendar year and the sources thereof. [4]

Count Four

(Sec. 145 (b), I.R.C.; 26 U.S.C., 145 (b))

The grand jury further charges:

That on or about the 15th day of March, 1943, in the Southern District of California, and within the jurisdiction of this Court, Sam Ormont did wilfully, knowingly, unlawfully and feloniously attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1942 (1) by preparing and causing to be prepared and filing and causing to be filed with the Collector of Internal Revenue for the Sixth Internal Revenue Collection District of California a false and fraudulent income tax return wherein he stated that his net income for said calendar year was the sum of \$10,891.52 and that the amount of tax due and owing thereon was the sum of \$2477.91, whereas, as he then and there well knew, his net income for the said calendar year was the sum of \$14,423.42, upon which said net income

he owed to the United States of America an income tax of \$3875.84; and (2) by concealing and attempting to conceal from the said Collector and any and all proper officers of the United States the true and correct gross and net incomes received by him during the said calendar year and the sources thereof.

/s/ JAMES M. CARTER,
United States Attorney.

A True Bill:

/s/ R. W. BLANCHARD,
Foreman.

[Endorsed]: Filed Jan. 22, 1947. [5]

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes now the defendant, Phillip Himmelfarb, by his attorneys, Daly B. Robnett and Benjamin F. Kosdon, and moves the Court for an order dismissing the above-entitled case, and the Indictment rendered and filed therein, and each and all of the separate counts thereof, on the following grounds:

1. That Count One of said Indictment does not state facts sufficient to constitute a crime or offense on the part of this defendant.
2. That Count One of said Indictment does not state facts sufficient to constitute a crime or offense

by this defendant, and is uncertain in the following particulars:

- (a) That it does not appear therein and cannot be ascertained therefrom whether or not there is any income tax due or unpaid from defendant Sam Ormont to the plaintiff;
- (b) That it does not appear therein and cannot be ascertained therefrom, whether or not any part of the alleged income [6] tax alleged to have been the sum of \$18,143.12, has not been paid or remains unpaid;
- (c) That it does not appear therein and cannot be ascertained therefrom, whether or not any part of the alleged income tax was unpaid at the time the indictment was voted, rendered or returned;
- (d) That it does not appear therein and cannot be ascertained therefrom, what sum or sums, if any, have been paid on account of said alleged income tax, nor whether or not the said income tax or any part thereof remained unpaid at the time said indictment was found;
- (e) That it does not appear therein and cannot be ascertained therefrom, whether or not this defendant prepared or filed the alleged false and fraudulent income and victory tax return of defendant Sam Ormont, or whether or not his co-defendant, the said Sam Ormont, prepared and filed the same;
- (f) That it does not appear therein and cannot be ascertained therefrom, whether or not this de-

fendant, or either defendant, "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income and victory tax return of defendant, Sam Ormont;

(g) That it does not appear therein and cannot be ascertained therefrom whether or not any of the acts alleged to have been done or caused to be done by the defendants or either of them, were "wilful";

(h) That it does not appear therein and cannot be ascertained therefrom, whether or not this defendant "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income and victory tax return of defendant Sam Ormont, nor whether or not said defendant Sam Ormont authorized or ratified any such acts of this defendant, nor whether or not this defendant aided in the preparation or filing of any such return, nor [7] which of the defendants, if either, made the statements of the net income or the amount of tax;

(i) That it does not appear therein and cannot be ascertained therefrom that defendants, or either of them, ever prepared or filed any return of defendant Sam Ormont's "Gross Income" with the Internal Revenue Department;

(j) That it does not appear therein how or in what manner the defendants, or either of them, could be guilty of attempting to defeat and evade a large part of the income tax due from defendant Sam Ormont for the year 1944, by preparing or filing a false and fraudulent "victory tax return" for said year;

(k) That it does not appear therein and cannot be ascertained therefrom what the "Gross Income" of defendant Sam Ormont was for the year 1944;

(l) That it does not appear therein what the basis is for the figure of \$36,982.52 which plaintiff alleges was the net income for income tax purposes;

(m) That it does not appear therein what portion of the alleged income tax of \$18,143.12 was or is claimed as "Victory Tax" and what portion is claimed as "Normal Tax" and what portion is claimed as "Surtax";

(n) That it does not appear therein what or who were "proper officers of the United States" other than the Collector of Internal Revenue, from whom defendants are charged with "concealing and attempting to conceal" the true and correct gross and net incomes received by defendant Sam Ormont;

(o) That it does not appear therein what the "true and correct" gross incomes of defendant Sam Ormont were, or was, which it is claimed these defendants concealed or attempted to conceal;

(p) That it does not appear therein how or in what manner this defendant, or either of the defendants, could be guilty of any offense for concealing or attempting to conceal "the sources" of [8] defendant Sam Ormont's gross income or net income;

(q) That it does not appear therein how or in what manner the alleged concealing and attempting to conceal "the sources" of defendant Sam Ormont's gross and/or net income, constituted any

violation of Section 145 (b), I. R. C., and/or 26 U. S. C. 145 (b), which it is claimed that the defendants violated, for the reason that said provisions of law under which said indictment was returned to not require any such disclosure, and neither of the defendants was under any duty or obligation to make any such disclosure under said law.

3. That Count One of said indictment does not state facts sufficient to constitute an offense by this defendant, and is uncertain for the reason that it does not appear therein that this defendant was a person required under the law to collect, account for, pay over, or pay the income or income tax of said Sam Ormont in said Count alleged, or any part thereof.

4. That two separate alleged offenses are set forth in said Count One and not separately stated, in this, that an *allegee* felony for attempting to defeat and evade income tax under subdivision (b) of Section 145, under which said indictment was rendered, is attempted to be joined with a possible or questionable offense of concealing "sources of income" which latter does not constitute any offense, or if so, constitutes only a misdemeanor under sub-paragraph (a) of said section 145; and said indictment does not show or allege wherein any failure to disclose the said "sources" of income constituted any offense.

5. That said Count One of said Indictment is ambiguous and unintelligible in each of the particulars specified in paragraph 2 hereinbefore set forth.

6. That Count Two of said Indictment does not state facts sufficient to constitute a crime or offense on the part of this defendant, or either of them.

7. That Count Two of said Indictment does not state facts [9] sufficient to constitute a crime or offense by this defendant, or either of them, and is uncertain in the following particulars:

(a) That it does not appear therein and cannot be ascertained therefrom whether or not there is any income tax due or paid from this defendant to the plaintiff;

(b) That it does not appear therein and cannot be ascertained therefrom, whether or not any part of the alleged income tax alleged to have been the sum of \$5843.91, has not been paid or remains unpaid;

(c) That it does not appear therein and cannot be ascertained therefrom, whether or not any part of the alleged income tax was unpaid at the time the indictment was voted, rendered or returned;

(d) That it does not appear therein and cannot be ascertained therefrom, what sum or sums, if any, have been paid on account of said alleged income tax, nor whether or not the said income tax or any part thereof remained unpaid at the time said indictment was found;

(e) That it does not appear therein and cannot be ascertained therefrom, whether or not this defendant prepared or filed the alleged false and fraudulent income and victory tax return, or whether

or not his co-defendant Sam Ormont, prepared and filed the same;

(f) That it does not appear therein and cannot be ascertained therefrom, whether or not this defendant "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income and victory tax return;

(g) That it does not appear therein and cannot be ascertained therefrom whether or not any of the acts alleged to have been done or caused to be done by the defendants, or either of them were "wilful";

(h) That it does not appear therein and cannot be ascertained [10] therefrom whether or not the defendant Sam Ormont "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income and victory tax return for this defendant, nor whether or not this defendant authorized or ratified any such acts of defendant Sam Ormont, nor whether or not defendant Sam Ormont aided in the preparation or filing of any such return, nor which of the defendants, if either, made the statements of the net income or the amount of tax of this defendant;

(i) That it does not appear therein and cannot be ascertained therefrom that defendants, or either of them, ever prepared or filed any return of this defendant's "Gross Income" with the Internal Revenue Department;

(j) That it does not appear therein how or in what manner the defendants, or either of them, could be guilty of attempting to defeat and evade

a large part of the income tax due from this defendant for the year 1944, by preparing or filing a false and fraudulent income tax return for said year;

(k) That it does not appear therein and cannot be ascertained therefrom what the "Gross Income" of this defendant was for the year 1944;

(l) That it does not appear therein what the basis is for the figure of \$17,752.65 which plaintiff alleges was the net income for income tax purposes;

(m) That it does not appear therein what portion of the alleged income tax of \$5843.91 was or is claimed as "Victory Tax" and what portion is claimed as "Normal Tax" and what portion is claimed as "Surtax";

(n) That it does not appear therein what or who were "proper officers of the United States" other than the Collector of Internal Revenue, from whom defendants are charged with "concealing and attempting to conceal" the true and correct gross and net incomes received by this defendant. [11]

(o) That it does not appear therein what the "true and correct" gross incomes of this defendant were, or was, which it is claimed these defendants concealed and attempted to conceal;

(p) That it does not appear therein how or in what manner this defendant, or either of them, could be guilty of any offense for concealing or attempting to conceal "the sources" of this defendant's gross income or net income;

(q) That it does not appear therein how or in what manner the alleged concealing and attempting

to conceal "the sources" of this defendant's gross and/or net income, constituted any violation of Section 145 (b), I. R. C.; and/or 26 U. S. C. 145 (b), which it is claimed that the defendants violated, for the reason that said provisions of law under which said indictment was returned do not require any such disclose, and neither of the defendants was under any duty or obligation to make any such disclosure under said law.

8. That two separate alleged offenses are set forth in said Count Two and not separately stated, in this, that an alleged felony for attempting to defeat and evade the income tax under subdivision (b) of Section 145, under which said indictment was rendered, is attempted to be joined with a possible or questionable offense of concealing "sources of income" which latter does not constitute any offense, or if so, constitutes only a misdemeanor under sub-paragraph (a) of said Section 145; and said indictment does not show or allege wherein any failure to disclose the said "sources" of income constituted any offense.

9. That said Count Two of said indictment is ambiguous and unintelligible in each of the particulars specified in paragraph 7 hereinbefore set forth.

10. That Count Three of said Indictment does not state facts sufficient to constitute a crime or offense on the part of this defendant.

11. That Count Three of said Indictment does not state facts [12] sufficient to constitute a crime

or offense on the part of this defendant, and is uncertain in the following particulars:

- (a) That it does not appear therein and cannot be ascertained therefrom whether or not there is any income tax due or paid from defendant Sam Ormont to the plaintiff;
- (b) That it does not appear therein and cannot be ascertained therefrom whether or not any part of the alleged income tax alleged to have been the sum of \$13,461.29, has not been paid or remains unpaid;
- (c) That it does not appear therein and cannot be ascertained therefrom whether or not any part of the alleged income and victory tax was unpaid at the time the indictment was voted, rendered or returned;
- (d) That it does not appear therein and cannot be ascertained therefrom, what sum or sums, if any, have been paid on account of said alleged income and victory tax, nor whether or not the said income and victory tax or any part thereof remained unpaid at the time said indictment was found;
- (e) That it does not appear therein and cannot be ascertained therefrom, whether or not this defendant prepared or filed the alleged false and fraudulent income and victory tax return, or whether or not his co-defendant Sam Ormont, prepared and filed the same;
- (f) That it does not appear therein and cannot be ascertained therefrom, whether or not this defendant "wilfully" prepared, or caused to be pre-

pared, or filed or caused to be filed, the alleged false and fraudulent income and victory tax return of defendant Sam Ormont, or whether or not the defendant Sam Ormont "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the said alleged false and fraudulent income and victory tax return;

(g) That it does not appear therein and cannot be ascertained therefrom whether or not any of the acts alleged to have been done or caused to be done by the defendants or either of them were "wilful";

(h) That it does not appear therein and cannot be ascertained therefrom whether or not the defendant Phillip Himmelfarb "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income and victory tax return for the defendant Sam Ormont, nor whether or not said defendant Sam Ormont authorized or ratified any such acts of this defendant, nor whether or not this defendant aided in the preparation or filing of any such return, nor which of the defendants, if either, made the statements of the net income or the amount of tax;

(i) That it does not appear therein and cannot be ascertained therefrom that defendants, or either of them, ever prepared or filed any return of defendant Sam Ormont's "Gross Income" with the Internal Revenue Department;

(j) That it does not appear therein how or in what manner the defendants, or either of them, could be guilty of attempting to defeat and evade a

large part of the income tax due from defendant Sam Ormont for the year 1943, by preparing or filing a false and fraudulent income and victory tax return for said year;

(k) That it does not appear therein and cannot be ascertained therefrom what the "Gross Income" of defendant Sam Ormont was for the year 1943;

(l) That it does not appear therein what the basis is for the figure of \$30,512.86 which plaintiff alleges was the net income for income tax purposes; nor what the basis is for the figure of \$30,587.05 which plaintiff alleges was the net income for victory tax purposes;

(m) That it does not appear therein what portion of the alleged income and victory tax of \$13,461.29 was or is claimed as "Victory Tax" and what portion is claimed as "Normal Tax" and what portion is claimed as "Surtax";

(n) That it does not appear therein what or who were "proper officers of the United States" other than the Collector of [14] Internal Revenue, from whom the defendant Sam Ormont is charged with "concealing and attempting to conceal" the true and correct gross and net incomes received by defendant Sam Ormont;

(o) That it does not appear therein what the "true and correct" gross incomes of defendant Sam Ormont were, or was, which it is claimed the defendant Sam Ormont concealed and attempted to conceal;

(p) That it does not appear therein how or in what manner defendant Sam Ormont, or either of the defendants, could be guilty of any offense for concealing or attempting to conceal "the sources" of defendant Sam Ormont's gross income or net income;

(q) That it does not appear therein how or in what manner the alleged concealing and attempting to conceal "the sources" of defendant Sam Ormont's gross and/or net income, constituted any violation of Section 145 (b), I. R. C.; and/or 26 U. S. C. 145 (b), which it is claimed that the defendant Sam Ormont violated, for the reason that said provisions of law under which said indictment was returned do not require any such disclosure, and neither of the defendants was under any duty or obligation to make any such disclosure under said law.

12. That Count Three of said indictment does not state facts sufficient to constitute an offense by this defendant, or either of them, and is uncertain for the reason that it does not appear therein that this defendant was a person required under the law to collect, account for, pay over, or pay the income or income tax of said Sam Ormont in said Count alleged, or any part thereof.

13. That two separate alleged offenses are set forth in said Count Three and not separately stated, in this, that an alleged felony for attempting to defeat and evade income tax under subdivision (b)

of Section 145, under which said indictment was rendered, is attempted to be joined with a possible or questionable offense of concealing "sources of income" which latter does not constitute any offense, or if so, constitutes only a misdemeanor under sub-paragraph (a) of said [15] Section 145; and said indictment does not show or allege wherein any failure to disclose the said "sources" of income constituted any offense.

14. That said Count Three of said Indictment is ambiguous and unintelligible in each of the particulars specified in paragraph 11 hereinbefore set forth.

15. That Count Four of said Indictment does not state facts sufficient to constitute a crime or offense on the part of this defendant, or either of them.

16. That Count Four of said Indictment does not state facts sufficient to constitute a crime or offense by these defendants, and is uncertain in the following particulars:

(a) That it does not appear therein and cannot be ascertained therefrom whether or not there is any income tax due or paid from defendant Sam Ormont to the plaintiff;

(b) That it does not appear therein and cannot be ascertained therefrom, whether or not any part of the alleged income tax alleged to have been the sum of \$3875.84, has not been paid or remains unpaid;

- (c) That it does not appear therein and cannot be ascertained therefrom, whether or not any part of the alleged income tax was unpaid at the time the indictment was voted, rendered or returned;
- (d) That it does not appear therein and cannot be ascertained therefrom, what sum or sums, if any, have been paid on account of said alleged income tax, nor whether or not the said income tax or any part thereof remained unpaid at the time said indictment was found;
- (e) That it does not appear therein and cannot be ascertained therefrom, whether or not defendant Sam Ormont prepared or filed the alleged false and fraudulent income tax return, or whether or not this defendant prepared and filed the same; [16]
- (f) That it does not appear therein and cannot be ascertained therefrom, whether or not defendant Sam Ormont "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income tax return;
- (g) That it does not appear therein and cannot be ascertained therefrom whether or not any of the acts alleged to have been done or caused to be done by this defendant, or either defendant, were "wilful";
- (h) That it does not appear therein and cannot be ascertained therefrom whether or not the defendant Sam Ormont "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income tax return for

defendant Sam Ormont, nor whether or not said defendant Sam Ormont authorized or ratified any such acts of this defendant, nor whether or not this defendant aided in the preparation or filing of any such return, nor which of the defendants, if either, made the statements of the net income or the amount of tax;

(i) That it does not appear therein and cannot be ascertained therefrom that this defendant, or either defendant, ever prepared or filed any return of defendant Sam Ormont's "Gross Income" with the Internal Revenue Department;

(j) That it does not appear therein how or in what manner this defendant, or either defendant, could be guilty of attempting to defeat and evade a large part of the income tax due from defendant Sam Ormont for the year 1942, by preparing or filing a false and fraudulent income tax return for said year;

(k) That it does not appear therein and cannot be ascertained therefrom what the "Gross Income" of defendant Sam Ormont was for the year 1942;

(l) That it does not appear therein what the basis is for the figure of \$14,423.42 which plaintiff alleges was defendant Sam Ormont's net income for said calendar year; [17]

(m) That it does not appear therein what portion of the alleged income tax of \$3875.84 was or is claimed as "Normal Tax" and what portion is claimed as "Surtax";

(n) That it does not appear therein what or who were "proper officers of the United States" other than the Collector of Internal Revenue, from whom the defendant Sam Ormont is charged with "concealing and attempting to conceal" the true and correct gross and net incomes received by defendant Sam Ormont;

(o) That it does not appear therein what the "true and correct" gross incomes of defendant Sam Ormont were, or was, which it is claimed said defendant Sam Ormont concealed and attempted to conceal;

(p) That it does not appear therein how or in what manner this defendant, or either of the defendants, could be guilty of any offense for concealing or attempting to conceal "the sources" of defendant Sam Ormont's gross income or net income;

(q) That it does not appear therein how or in what manner the alleged concealing and attempting to conceal "the sources" of defendant Sam Ormont's gross and/or net income, constituted any violation of Section 145 (b), I. R. C.; and/or 26 U. S. C. 145 (b), which it is claimed that said defendant Sam Ormont violated, for the reason that said provisions of law under which said indictment was returned do not require any such disclosure, and neither of the defendants was under any duty or obligation to make any such disclosure under said law.

17. That Count Four of said indictment does not state facts sufficient to constitute an offense by

this defendant, or either of them, and is uncertain for the reason that it does not appear therein that this defendant was a person required under the law to collect, account for, pay over, or pay the income or income tax of said Sam Ormont in said Count alleged, or any part thereof.

18. That two separate alleged offenses are set forth in said [18] Count Four and not separately stated, in this, that an alleged felony for attempting to defeat and evade income tax under subdivision (b) of Section 145, under which said indictment was rendered, is attempted to be joined with a possible or questionable offense of concealing "sources of income" which latter does not constitute any offense, or if so, constitute only a misdemeanor under sub-paragraph (a) of said Section 145; and said indictment does not show or allege wherein any failure to disclose the said "sources" of income constituted any offense.

19. That said Count Four of said Indictment is ambiguous and unintelligible in each of the particulars specified in paragraph 16 hereinbefore set forth.

DALY B. ROBNETT and
BENJAMIN F. KOSDON,

/s/ DALY B. ROBNETT,
Attorneys for Defendant
Phillip Himmelfarb.

Notice of Hearing

To James M. Carter, United States Attorney:

You are hereby notified that the undersigned, attorneys for the defendant named in the foregoing Motion, will present said Motion to the above-entitled court on Monday, the 10th day of February, 1947, at the hour of ten o'clock a.m., or as soon thereafter as counsel can be heard.

Dated February 3, 1947.

DALY B. ROBNETT and
BENJAMIN F. KOSDON,
By /s/ DALY B. ROBNETT,

Received copy of the foregoing Motion and Notice of Hearing, this 3rd day of February, 1947.

JAMES M. CARTER,
By /s/ WILLIAM STRONG,
Assistant United States
Attorney.

[Endorsed]: Filed Feb. 3, 1947.

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes now the defendant, Sam Ormont, by his attorneys, Daly B. Robnett and Benjamin K. Kosdon, and moves the Court for an order dismissing the above-entitled case, and the Indictment ren-

dered and filed therein, and each and all of the separate counts thereof, on the following grounds:

1. That Count One of said Indictment does not state facts sufficient to constitute a crime or offense on the part of this defendant.
2. That Count One of said Indictment does not state facts sufficient to constitute a crime or offense by this defendant, and is uncertain in the following particulars:
 - (a) That it does not appear therein and cannot be ascertained therefrom whether or not there is any income tax due or unpaid from this defendant to the plaintiff;
 - (b) That it does not appear therein and cannot be ascertained therefrom, whether or not any part of the alleged income [21] tax alleged to have been the sum of \$18,143.12, has not been paid or remains unpaid;
 - (c) That it does not appear therein and cannot be ascertained therefrom, whether or not any part of the alleged income tax was unpaid at the time the indictment was voted, rendered or returned;
 - (d) That it does not appear therein and cannot be ascertained therefrom, what sum or sums, if any, have been paid on account of said alleged income tax, nor whether or not the said income tax or any part thereof remained unpaid at the time said indictment was found;
 - (e) That it does not appear therein and cannot be ascertained therefrom, whether or not this de-

fendant prepared or filed the alleged false and fraudulent income and victory tax return, or whether or not his co-defendant Phillip Himmelfarb, prepared and filed the same;

(f) That it does not appear therein and cannot be ascertained therefrom, whether or not this defendant "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income and victory tax return;

(g) That it does not appear therein and cannot be ascertained therefrom whether or not any of the acts alleged to have been done or caused to be done by the defendants or either of them, were "wilful";

(h) That it does not appear therein and cannot be ascertained therefrom whether or not the defendant Phillip Himmelfarb "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income and victory tax return for this defendant Sam Ormont, nor whether or not this defendant authorized or ratified any such acts of said defendant Phillip Himmelfarb, nor whether or not said defendant Himmelfarb aided in the preparation or filing of any such return, nor which of the defendants, if either, made the statements of the net income or the amount of tax;

(i) That it does not appear therein and cannot be ascertained therefrom that defendants, or either of them, ever prepared or filed any return of this defendant's "Gross Income" with the Internal Revenue Department;

(j) That it does not appear therein how or in what manner the defendants, or either of them, could be guilty of attempting to defeat and evade a large part of the income tax due from this defendant for the year 1944, by preparing or filing a false and fraudulent "victory tax return" for said year;

(k) That it does not appear therein and cannot be ascertained therefrom what the "Gross Income" of this defendant was for the year 1944;

(l) That it does not appear therein what the basis is for the figure of \$36,982.52 which plaintiff alleges was the net income for income tax purposes;

(m) That it does not appear therein what portion of the alleged income tax of \$18,143.12 was or is claimed as "Victory Tax" and what portion is claimed as "Normal Tax" and what portion is claimed as "Surtax";

(n) That it does not appear therein what or who were "proper officers of the United States" other than the Collector of Internal Revenue, from whom defendants are charged with "concealing and attempting to conceal" the true and correct gross and net incomes received by this defendant;

(o) That it does not appear therein what the "true and correct" gross incomes of this defendant were, or was, which it is claimed this defendant concealed and attempted to conceal;

(p) That it does not appear therein how or in what manner this defendant, or either of the defendants, could be guilty of any offense for conceal-

ing or attempting to conceal "the sources" of [23] this defendant's gross income or net income;

(q) That it does not appear therein how or in what manner the alleged concealing and attempting to conceal "the sources" of this defendant's gross and/or net income, constituted any violation of Section 145 (b), I. R. C.; and/or 26 U. S. C. 145 (b), which it is claimed that the defendants violated, for the reason that said provisions of law under which said indictment was returned do not require any such disclosure, and neither of the defendants was under any duty or obligation to make any such disclosure under said law.

3. That two separate alleged offenses are set forth in said Count One and not separately stated, in this, that an alleged felony for attempting to defeat and evade income tax under subdivision (b) of Section 145, under which said indictment was rendered, is attempted to be joined with a possible or questionable offense of concealing "sources of income" which latter does not constitute any offense, or if so, constituted only a disdemeanor under sub-paragraph (a) of said Section 145; and said indictment does not show or allege wherein any failure to disclose the said "sources" of income constituted any offense.

4. That said Count One of said Indictment is ambiguous and unintelligible in each of the particulars specified in paragraph 2 hereinbefore set forth.

5. That Count Two of said Indictment does not state facts sufficient to constitute a crime or offense on the part of this defendant.

6. That Count Two of said Indictment does not state facts sufficient to constitute an offense by this defendant, and is uncertain for the reason that it does not appear therein that this defendant was a person required under the law to collect, account for, pay over, or pay the income or income tax of said Phillip Himmelfarb in said count alleged, or any part thereof.

7. That Count Two of said Indictment does not state facts [24] sufficient to constitute a crime or offense by this defendant, and is uncertain in the following particulars:

(a) That it does not appear therein and cannot be ascertained therefrom whether or not there is any income tax due or paid from defendant Phillip Himmelfarb to the plaintiff;

(b) That it does not appear therein and cannot be ascertained therefrom, whether or not any part of the alleged income tax alleged to have been the sum of \$5843.91, has not been paid or remains unpaid;

(c) That it does not appear therein and cannot be ascertained therefrom, whether or not any part of the alleged income tax was unpaid at the time the indictment was voted, rendered or returned;

(d) That it does not appear therein and cannot be ascertained therefrom, what sum or sums, if any, have been paid on account of said alleged income tax, nor whether or not the said income tax or any part thereof remained unpaid at the time said indictment was found;

(e) That it does not appear therein and cannot be ascertained therefrom, whether or not defendant Sam Ormont prepared or filed the alleged false and fraudulent income and victory tax return, or whether or not his co-defendant Phillip Himmelfarb, prepared and filed the same;

(f) That it does not appear therein and cannot be ascertained therefrom, whether or not defendant Phillip Himmelfarb "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income and victory tax return;

(g) That it does not appear therein and cannot be ascertained therefrom whether or not any of the acts alleged to have been done or caused to be done by the defendants, or either of them, were "wilful"; [25]

(h) That it does not appear therein and cannot be ascertained therefrom whether or not this defendant Sam Ormont "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income and victory tax return for the defendant Phillip Himmelfarb, nor whether or not the defendant Phillip Himmelfarb authorized or ratified any such acts of this defendant Sam Ormont, nor whether or not this defendant Sam Ormont aided in the preparation or filing of any such return, nor which of the defendants, if either, made the statements of the net income or the amount of tax of the defendant Phillip Himmelfarb;

(i) That it does not appear therein and cannot be ascertained therefrom that defendants, or either of them, ever prepared or filed any return of defendant Phillip Himmelfarb's "Gross Income" with the Internal Revenue Department;

(j) That it does not appear therein how or in what manner the defendants, or either of them, could be guilty of attempting to defeat and evade a large part of the income tax due from defendant Phillip Himmelfarb for the year 1944, by preparing or filing a false and fraudulent income tax return for said year;

(k) That it does not appear therein and cannot be ascertained therefrom what the "Gross Income" of defendant Phillip Himmelfarb was for the year 1944;

(l) That it does not appear therein what the basis is for the figure of \$17,752.65 which plaintiff alleges was the net income for income tax purposes;

(m) That it does not appear therein what portion of the alleged income tax of \$5843.91 was or is claimed as "Victory Tax" and what portion is claimed as "Normal Tax" and what portion is claimed as "Surtax";

(n) That it does not appear therein what or who were "proper officers of the United States" other than the Collector of Internal Revenue, from whom defendants are charged with "concealing and attempting to conceal" the true and correct gross and net incomes received by defendant Phillip Himmelfarb;

(o) That it does not appear therein what the "true and correct" gross incomes of defendant Phillip Himmelfarb were, or was, which it is claimed these defendants concealed and attempted to conceal;

(p) That it does not appear therein how or in what manner defendant Phillip Himmelfarb, or either of the defendants, could be guilty of any offense for concealing or attempting to conceal "the sources" of defendant Phillip Himmelfarb's gross income or net income;

(q) That it does not appear therein how or in what manner the alleged concealing and attempting to conceal "the sources" of defendant Phillip Himmelfarb's gross and/or net income, constituted any violation of Section 145 (b), I. R. C.; and/or 26 U. S. C. 145 (b), which it is claimed that the defendants violated, for the reason that said provisions of law under which said indictment was returned do not require any such disclosure, and neither of the defendants was under any duty or obligation to make any such disclosure under said law.

8. That two separate alleged offenses are set forth in said Count Two and not separated stated, in this, that an alleged felony for attempting to defeat and evade income tax under subdivision (b) of Section 145, under which said indictment was rendered, is attempted to be joined with a possible or questionable offense of concealing "sources of income" which latter does not constitute any offense, or if so, constitutes only a misdemeanor

under sub-paragraph (a) of said Section 145; and said indictment does not show or allege wherein any failure to disclose the said "sources" of income constituted any offense.

9. That said Count Two of said Indictment is ambiguous and unintelligible in each of the particulars specified in paragraph 7 hereinbefore set forth.

10. That Count Two of said Indictment does not state facts [27] sufficient to constitute a crime or offense on the part of defendant Phillip Himmelfarb.

11. That Count Three of said Indictment does not state facts sufficient to constitute a crime or offense on the part of this defendant.

12. That Count Three of said Indictment does not state facts sufficient to constitute a crime or offense by this defendant, and is uncertain in the following particulars:

(a) That it does not appear therein and cannot be ascertained therefrom whether or not there is any income tax due or paid from this defendant to the plaintiff;

(b) That it does not appear therein and cannot be ascertained therefrom, whether or not any part of the alleged income tax alleged to have been the sum of \$13,461.29, has not been paid or remains unpaid;

(c) That it does not appear therein and cannot be ascertained therefrom, whether or not any part of the alleged income and victory tax was unpaid at the time the indictment was voted, rendered or returned;

(d) That it does not appear therein and cannot be ascertained therefrom, what sum or sums, if any, have been paid on account of said alleged income and victory tax, nor whether or not the said income and victory tax or any part thereof remained unpaid at the time said indictment was found;

(e) That it does not appear therein and cannot be ascertained therefrom, whether or not this defendant prepared or filed the alleged false and fraudulent income and victory tax return, or whether or not his co-defendant Phillip Himmelfarb, prepared and filed the same;

(f) That it does not appear therein and cannot be ascertained therefrom, whether or not this defendant "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income and victory tax return;

(g) That it does not appear therein and cannot be ascertained [28] therefrom whether or not any of the acts alleged to have been done or caused to be done by the defendants or either of them, were "wilful";

(h) That it does not appear therein and cannot be ascertained therefrom whether or not the defendant Phillip Himmelfarb "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income and victory tax return for this defendant, Sam Ormont, nor whether or not this defendant authorized or ratified any such acts of said defendant Phillip Himmelfarb, nor whether or not said defendant Phillip

Himmelfarb aided in the preparation or filing of any such return, nor which of the defendants, if either, made the statements of the net income or the amount of tax;

(i) That it does not appear therein and cannot be ascertained therefrom that defendants, or either of them, ever prepared or filed any return of this defendant's "Gross Income" with the Internal Revenue Department;

(j) That it does not appear therein how or in what manner the defendants, or either of them, could be guilty of attempting to defeat and evade a large part of the income tax due from this defendant for the year 1943, by preparing or filing a false and fraudulent income and victory tax return for said year;

(k) That it does not appear therein and cannot be ascertained therefrom what the "Gross Income" of this defendant was for the year 1943;

(l) That it does not appear therein what the basis is for the figure of \$30,512.86 which plaintiff alleges was the net income for income tax purposes; nor what the basis is for the figure of \$30,587.05 which plaintiff alleges was the net income for victory tax purposes;

(m) That it does not appear therein what portion of the alleged income and victory tax of \$13,461.29 was or is claimed as "Victory tax" and what portion is claimed as "Normal Tax" and what [29] portion is claimed as "Surtax";

(n) That it does not appear therein what or who were "proper officers of the United States" other than the Collector of Internal Revenue, from whom this defendant is charged with "concealing and attempting to conceal" the true and correct gross and net incomes received by this defendant;

(o) That it does not appear therein what the "true and correct" gross incomes of this defendant were, or was, which it is claimed this defendant concealed and attempted to conceal;

(p) That it does not appear therein how or in what manner this defendant, or either of the defendants, could be guilty of any offense for concealing or attempting to conceal "the sources" of this defendant's gross income or net income;

(q) That it does not appear therein how or in what manner the alleged concealing and attempting to conceal "the sources" of this defendant's gross and/or net income, constituted any violation of Section 145 (b), I. R. C.; and/or 26 U. S. C. 145 (b), which it is claimed that the defendant violated, for the reason that said provisions of law under which said indictment was returned do not require any such disclosure, and neither of the defendants was under any duty or obligation to make any such disclosure under said law.

13. That two separate alleged offenses are set forth in said Count Three and not separately stated, in this, that an alleged felony for attempting to defeat and evade income tax under subdivision (b) of Section 145, under which said indictment was

rendered, is attempted to be joined with a possible or questionable offense of concealing "sources of income" which latter does not constitute any offense, or if so, constitutes only a misdemeanor under subparagraph (a) of said Section 145; and said indictment does not show or allege wherein any failure to disclose the said "sources" of income constituted any offense.

14. That said Count Three of said Indictment is ambiguous and [30] unintelligible in each of the particulars specified in paragraph 12 hereinbefore set forth.

15. That Count Four of said Indictment does not state facts sufficient to constitute a crime or offense on the part of this defendant.

16. That Count Four of said Indictment does not state facts sufficient to constitute a crime or offense by this defendant, and is uncertain in the following particulars:

(a) That it does not appear therein and cannot be ascertained therefrom whether or not there is any income tax due or paid from this defendant to the plaintiff;

(b) That it does not appear therein and cannot be ascertained therefrom, whether or not any part of the alleged income tax alleged to have been the sum of \$3875.84, has not been paid or remains unpaid;

(c) That it does not appear therein and cannot be ascertained therefrom, whether or not any part of the alleged income tax was unpaid at the time the indictment was voted, rendered or returned;

(d) That it does not appear therein and cannot be ascertained therefrom, what sum or sums, if any, have been paid on account of said alleged income tax, nor whether or not the said income tax or any part thereof remained unpaid at the time said indictment was found;

(e) That it does not appear therein and cannot be ascertained therefrom, whether or not this defendant prepared or filed the alleged false and fraudulent income tax return, or whether or not his co-defendant Phillip Himmelfarb, prepared and filed the same;

(f) That it does not appear therein and cannot be ascertained therefrom, whether or not this defendant "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income tax return; [31]

(g) That it does not appear therein and cannot be ascertained therefrom whether or not any of the acts alleged to have been done or caused to be done by this defendant, or either defendant, were "wilful";

(h) That it does not appear therein and cannot be ascertained therefrom whether or not the defendant Phillip Himmelfarb "wilfully" prepared, or caused to be prepared, or filed or caused to be filed, the alleged false and fraudulent income tax return for this defendant, Sam Ormont, nor whether or not this defendant authorized or ratified any such acts of said defendant Phillip Himmelfarb, nor whether or not said defendant Phillip Himmelfarb aided in the preparation or filing of any such return, nor

which of the defendants, if either, made the statements of the net income or the amount of tax;

(i) That it does not appear therein and cannot be ascertained therefrom that this defendant, or either defendant, ever prepared or filed any return of this defendant's "Gross Income" with the Internal Revenue Department;

(j) That it does not appear therein how or in what manner this defendant, or either defendant, could be guilty of attempting to defeat and evade a large part of the income tax due from this defendant for the year 1942, by preparing or filing a false and fraudulent income tax return for said year;

(k) That it does not appear therein and cannot be ascertained therefrom what the "Gross Income" of this defendant was for the year 1942;

(l) That it does not appear therein what the basis is for the figure of \$14,423.42 which plaintiff alleges was this defendant's net income for said calendar year:

(m) That it does not appear therein what portion of the alleged income tax of \$3875.84 was or is claimed as "Normal Tax" and what portion is claimed as "Surtax";

(n) That it does not appear therein what or who were [32] "proper officers of the United States" other than the Collector of Internal Revenue, from whom this defendant is charged with "concealing and attempting to conceal" the true and correct gross and net incomes received by this defendant;

- (o) That it does not appear therein what the "true and correct" gross incomes of this defendant were, or was, which it is claimed this defendant concealed and attempted to conceal;
- (p) That it does not appear therein how or in what manner this defendant, or either of the defendants, could be guilty of any offense for concealing or attempting to conceal "the sources" of this defendant's gross income or net income;
- (q) That it does not appear therein how or in what manner the alleged concealing and attempting to conceal "the sources" of this defendant's gross and/or net income, constituted any violation of Section 145 (b), I. R. C.; and/or 26 U. S. C. 145 (b), which it is claimed that this defendant violated, for the reason that said provisions of law under which said indictment was returned do not require any such disclosure, and neither of the defendants was under any duty or obligation to make any such disclosure under said law.

17. That two separate alleged offenses are set forth in said Count Four and not separately stated, in this, that an alleged felony for attempting to defeat and evade income tax under subdivision (b) of Section 145, under which said indictment was rendered, is attempted to be joined with a possible or questionable offense of concealing "sources of income" which latter does not constitute any offense, or if so, constitutes only a misdemeanor under sub-paragraph (a) of said Section 145; and said indictment does not show or allege wherein any failure to disclose the said "sources" of income constituted any offense;

18. That said Count Four of said Indictment is ambiguous and unintelligible in each of the particulars specified in paragraph 16 hereinbefore set forth. [33]

DALY B. ROBNETT and
BENJAMIN F. KOSDON,

By /s/ DALY B. ROBNETT,
Attorneys for Defendant
Sam Ormont.

Notice of Hearing

To James M. Carter, United States Attorney:

You are hereby notified that the undersigned, attorneys for the defendant named in the foregoing Motion, will present said Motion to the above-entitled court on Monday, the 10th day of February, 1947 at the hour of ten o'clock a.m.. or as soon there after as counsel can be heard.

Dated February 3, 1947.

DALY B. ROBNETT and
BENJAMIN F. KOSDON,

By /s/ DALY B. ROBNETT,
Attorneys for said defendant.

* Received copy of the foregoing Motion and Notice of Hearing, this 3rd day of February, 1947.

JAMES M. CARTER,
By /s/ WILLIAM STRONG,
Asst. United States Attorney.

[Endorsed]: Filed Feb. 3, 1947. [35]

[Title of District Court and Cause.]

MOTION FOR BILL OF PARTICULARS

Comes now the defendant, Phillip Himmelfarb, by his attorneys Daly B. Robnett and Benjamin F. Kosdon, and moves the Court for an order requiring the United States of America, plaintiff, to furnish said defendant Phillip Himmelfarb, within a time to be therein specified, a written Bill of Particulars, in the above-entitled case, as to the following matters alleged in the Indictment herein to-wit:

1. Facts and figures showing the basis of the figure of \$36,982.52, which it is alleged in Count One of said Indictment defendant Sam Ormont's "Net income for the said calendar year . . . for income tax purposes."
2. An itemized statement of the various items, sums and figures used by said plaintiff in determining that defendant Sam Ormont's net income for the calendar year of 1944 was the sum of \$36,982.52 for income tax purposes, as alleged in the said Count One of said Indictment. [36]
3. An itemized statement of the sources from which derived, and the several amounts and the various items comprising and forming the basis for the sum of \$36,982.52, and of each component part thereof, alleged to be the net income of defendant Sam Ormont for 1944, as set forth in said Count One of Said Indictment.
4. An itemization of the portion of said alleged \$36,982.52 alleged in said Count One, which con-

stituted the net income for the calculation of defendant Sam Ormont's "Normal Tax" as provided in Section 11 of Chapter 1 of the Internal Revenue Code, as amended by "Individual Income Tax Act of 1944."

5. An itemization of the portion of the \$36,-982.52 alleged in said Count One, which constituted the "surtax net income" of defendant Sam Ormont for the year 1944, as provided in Section 12 (a) of Chapter 1 of the Internal Revenue Code, and amendments thereto.

6. An itemization of the portion of the \$36,-982.52 alleged in said Count One, which constituted the "Victory Tax Net Income" alleged in said Count One of said Indictment.

7. Facts, figures, items and sources showing the basis upon which plaintiff determined and alleges that defendant Sam Ormont's "net income for the said calendar year was the sum of \$36,982.52 for income tax purposes," in said Count One.

8. Facts, figures, items and sources showing the "gross income" of said defendant for said year 1944, from which plaintiff determined and alleges that "his net income for the said calendar year was the sum of \$36,982.51 for income tax purposes."

9. Facts, figures, items and nature of credits and deductions, [37] if any, made from such "gross income" before calculating, determining and alleging the "net income" subject to "normal tax," and likewise the credits and deductions, if any, made from such "gross income" before calculating and

determining the "surtax net income" and likewise the credits and deductions, if any, made from such "gross income" before calculating and determining the "Victory Tax Net Income."

10. Facts and figures showing the basis of the alleged income tax of defendant Sam Ormont in the total sum of \$18,143.12, as alleged in said Count One of said Indictment.

11. Facts and figures showing the credits and deductions, if any, made and credited, on said \$36,982.52 before calculating the "normal income tax" in the sum of \$18,143.12 alleged in said Count One.

12. Facts and figures showing the credits and deductions, if any, made and credited, on said \$36,982.52 before calculating the "surtax".

13. Facts and figures showing the credits and deductions, if any, made and credited, on said \$36,982.52, before calculating the alleged "Victory Tax."

14. Facts and figures showing the "net income" which was subject to the "Normal Tax"; and the facts and figures showing the "surtax net income"; and facts and figures showing the "Victory Tax net income."

15. Facts and figures showing what part or portion of the alleged \$18,143.12 which it is alleged defendant Sam Ormont owed the United States of America as income tax for said year 1944, is "Normal Tax", and what portion is "Surtax", and what portion is Alleged "Victory Tax".

16. A statement of dates and amounts of payments made by defendant [38] Sam Ormont on account of the income tax on the said items comprising said \$36,982.52 alleged net income.
17. A statement of the dates and amounts of credits for payments to the Collector of Internal Revenue, on account of the items, or any of them, comprising the alleged \$36,982.52 net income.
18. A statement of the dates and amounts of payments made by defendant Sam Ormont on account of the alleged tax of \$18,143.52.
19. A statement of the dates and amounts of credits, if any, which plaintiff made on said alleged tax of \$18,143.52, by payments made by defendant Sam Ormont.
20. A statement of the portion, if any, of the alleged tax of \$18,143.52 which was unpaid at the time said Indictment was rendered.
21. Facts and figures showing the basis of the figure of \$17,752.65, which it is alleged in Count Two of said Indictment was defendant Phillip Himmelfarb's "Net income for the said calendar year."
22. An itemized statement of the various items, sums and figures used by said plaintiff in determining that defendant Phillip Himmelfarb's net income for the calendar year of 1944 was the sum of \$17,752.65 for income tax purposes, as alleged in the said Count Two of said Indictment.
23. An itemized statement of the sources from which derived, and the several amounts and the

various items comprising and forming the basis for the sum of \$17,752.65, and of each component part thereof, alleged to be the net income of defendant Phillip Himmelfarb for 1944, as set forth in said Count Two of said [39] Indictment.

24. An itemization of the portion of said alleged \$17,752.65 alleged in said Count Two, which constituted the net income for the calculation of defendant Phillip Himmelfarb's "Normal Tax" as provided in Section 11 of Chapter 1 of the Internal Revenue Code, as amended by "Individual Income Tax Act of 1944."

25. An itemization of the portion of the \$17,752.65 alleged in said Count Two, which constituted the "surtax net income" of defendant Phillip Himmelfarb for the year 1944, as provided in Section 12 (a) of Chapter 1 of the Internal Revenue Code, and amendments thereto.

26. An itemization of the portion of the \$17,752.65 alleged in said Count Two, which constituted the "Victory Tax Net Income" alleged in said Count Two of said Indictment.

27. Facts, figures, items and sources showing the basis upon which plaintiff determined and alleges that defendant Phillip Himmelfarb's "net income for the said calendar year was the sum of \$17,752.65," in said Count Two.

28. Facts, figures, items and sources showing the "gross income" of defendant Phillip Himmelfarb for said year 1944, from which plaintiff determined and alleges that "his net income for the said calendar year was the sum of \$17,752.65."

29. Facts, figures, items and nature of credits and deductions, if any, made from such "gross income" before calculating, determining and alleging the "net income" subject to "normal tax," and likewise the credits and deductions, if any, made from such "gross income" before calculating and determining the "surtax net income" [40] and likewise the credits and deductions, if any, made from such "gross income" before calculating and determining the "Victory Tax Net Income."

30. Facts and figures showing the basis of the alleged income tax of defendant Phillip Himmelfarb in the total sum of \$5843.91, as alleged in said Count Two of said Indictment.

31. Facts and figures showing the credits and deductions, if any, made and credited, on said \$17,752.65 before calculating the "normal income tax" in the sum of \$5843.91 alleged in said Count Two.

32. Facts and figures showing the credits and deductions, of any, made and credited, on said \$17,752.65 before calculating the "surtax".

33. Facts and figures showing the credits and deduction, if any, made and credited, on said \$17,752.65, before calculating the alleged "Victory Tax".

34. Facts and figures showing the "net income" which was subject to the "Normal Tax"; and facts and figures showing the "surtax net income;" and facts and figures showing the "Victory Tax net income."

35. Facts and figures showing what part or portion of the alleged \$5843.91 which it is alleged that defendant Phillip Himmelfarb owed the United States of America as income tax for said year 1944, is "Normal Tax", and what portion is "Surtax", and what portion is alleged "Victory Tax".

36. A statement of dates and amounts of payments made by defendant Phillip Himmelfarb on account of the income tax on the said items comprising said \$17,752.65 alleged net income.

37. A statement of the dates and amounts of credits for payments [41] to the Collector of Internal Revenue, on account of the items, or any of them, comprising the alleged \$17,752.65 net income.

38. A statement of the dates and amounts of payments made by this defendant Phillip Himmelfarb on account of the alleged tax of \$5843.91.

39. A statement of the dates and amounts of credits, if any, which plaintiff made on said alleged tax of \$5843.91, by payments made by defendant Phillip Himmelfarb.

40. A statement of the portion, if any, of the alleged tax of \$5843.91 which was unpaid at the time said Indictment was rendered.

41. Facts and figures showing the basis of the figure \$30,512.86, which it is alleged in Count Three of said Indictment was defendant Sam Ormont's "Net income for the calendar year 1943 . . . for income tax purposes."

42. Facts and figures showing the basis of the figure of \$30,587.05, which it is alleged is said Count Three was defendant Sam Ormont's "Net income for the said calendar year . . . for victory tax purposes."

43. An itemized statement of the various items, sums and figures used by said plaintiff in determining that defendant Sam Ormont's net income for the calendar year of 1943 was the sum of \$30,512.86 for income tax purposes, as alleged in the said Count Three of said Indictment.

44. An itemized statement of the various items, sums and figures used by said plaintiff in determining that defendant Sam Ormont's net income for the calendar year of 1943 was the sum of \$30,587.05 for Victory Tax purposes, as alleged in the said Count Three of said Indictment. [42]

45. An itemized statement of the sources from which derived, and the several amounts and the various items comprising and forming the basis for the sum of \$30,512.86, and of each component part thereof, alleged to be the net income of defendant Sam Ormont for 1943 for income tax purposes, as set forth in said Count Three of said Indictment.

46. An itemized statement of the sources from which derived, and the several amounts and the various items comprising and forming the basis for the sum of \$30,587.05, and of each component part thereof, alleged to be the net income of defendant Sam Ormont for 1943 Victory Tax purposes, as set forth in said Count Three of said Indictment.

47. An itemization of the portion of said alleged \$30,512.86 alleged in said Count Three, which constituted the net income for the calculation of defendant Sam Ormont's "Normal Tax" as provided in Section 11 of Chapter 1 of the Internal Revenue Code, as amended by "Individual Income Tax Act of 1943."

48. An itemization of the portion of the \$30,512.86 alleged in said Count Three, which constituted the "surtax net income" of defendant Sam Ormont for the year 1943, as provided in Section 12 (a) of Chapter 1 of the Internal Revenue Code, and amendments thereto.

49. Facts, figures, items and sources showing the basis upon which plaintiff determined and alleges that defendant Sam Ormont's "net income for the said calendar year was the sum of \$30,512.86 for income tax purposes," in said Count Three.

50. Facts, figures, items and sources showing the basis upon which plaintiff determined and alleges that defendant [43] Sam Ormont's "net income for the said calendar year was the sum of \$30,587.05 for victory tax purposes," in said Count Three.

51. Facts, figures, items and sources showing the "gross income" of defendant Sam Ormont for said year 1943, from which plaintiff determined and alleges that "his net income for the said calendar year was the sum of \$30,512.86 for income tax purposes."

52. Facts, figures, items and nature of credits and deductions, if any, made from such "gross income" before calculating, determining and alleg-

ing the "net income" subject to "normal tax," and likewise the credits and deductions, if any, made from such "gross income" before calculating and determining the "surtax net income," and likewise the credits and deductions, if any, made from such "gross income" before calculating and determining the "Victory Tax Net Income."

53. Facts and figures showing the basis of the alleged income tax of defendant Sam Ormont in the total sum of \$13,461.29, as alleged in said Count Three of said Indictment.

54. Facts and figures showing the credits and deductions, if any, made and credited, on said \$30,512.86 before calculating the "normal income tax" in the sum of \$13,461.29 alleged in said Count Three.

55. Facts and figures showing the credits and deductions, if any, made and credited, on said \$30,512.86 before calculating the "surtax."

56. Facts and figures showing the "net income" which was subject to the "Normal Tax"; and facts and figures showing the "surtax net income"; and facts and figures showing the "Victory Tax net income." [44]

57. Facts and figures showing what part or portion of the alleged \$13,461.29 which it is alleged defendant Sam Ormont owed the United States of America as income and victory tax for said year 1943, is "Normal Tax", and what portion is "Surtax", and what portion is alleged "Victory Tax".

58. A statement of dates and amounts of payments made by defendant Sam Ormont on account

of the income tax on the said items comprising said \$30,512.86 alleged net income for income tax purposes.

59. A statement of dates and amounts of payments made by defendant Sam Ormont on account of the victory tax on the said items comprising said \$30,587.05 alleged net income for victory tax purposes.

60. A statement of the dates and amounts of credits for payments to the Collector of Internal Revenue, on account of the items, or any of them, comprising the alleged \$30,512.86 net income for income tax purposes.

61. A statement of the dates and amounts of credits for payments to the Collector of Internal Revenue, on account of the items, or any of them, comprising the alleged \$30,587.05 net income for victory tax purposes.

62. A statement of the dates and amounts of payments made by defendant Sam Ormont on account of the alleged tax of \$13,461.29.

63. A statement of the dates and amounts of credits, if any, which plaintiff made on said alleged tax of \$13,461.29, by payments made by the defendant Sam Ormont.

64. A statement of the portion, if any, of the alleged tax of \$13,461.29 which was unpaid at the time said Indictment was rendered.

65. Facts and figures showing the basis of the figure of \$14,423.42, which is alleged in Count Four

of said [45] Indictment was defendant Sam Ormont's "Net income for the said calendar year" of 1942.

66. An itemized statement of the various items, sums and figures used by said plaintiff in determining that Sam Ormont's net income for the calendar year of 1942 was the sum of \$14,423.42, as alleged in the said Count Four of said Indictment.

67. An itemized statement of the sources from which derived, and the several amounts and the various items comprising and forming the basis for the sum of \$14,423.42, and of each component part thereof, alleged to be the net income of defendant Sam Ormont for 1942, as set forth in said Count Four of said Indictment.

68. An itemization of the portion of said alleged \$14,423.42 alleged in said Count Four, which constituted the net income for the calculation of defendant Sam Ormont's "Normal Tax" as provided in Section 11 of Chapter 1 of the Internal Revenue Code.

69. An itemization of the portion of the \$14,423.42 alleged in said Count Four, which constituted the "surtax net income" of defendant Sam Ormont for the year 1942, as provided in Section 12 (a) of Chapter 1 of the Internal Revenue Code, and amendments thereto.

70. Facts, figures, items and sources showing the basis upon which plaintiff determined and alleges that defendant Sam Ormont's "net income for the said calendar year was the sum of \$14,423.42", in said Count Four.

71. Facts, figures, items and sources showing the "gross income" of defendant Sam Ormont for said year 1942, from which plaintiff determined and alleges that "his net income for the said calendar year was the sum of \$14,423.42." [46]

72. Facts, figures, items and nature of credits and deductions, if any, made from such "gross income" before calculating, determining and alleging the "net income" subject to "normal tax", and likewise the credits and deductions, if any, made from such "gross income" before calculating and determining the "surtax net income."

73. Facts and figures showing the basis of the alleged income tax of defendant Sam Ormont in the total sum of \$3875.84, as alleged in said Count Four of said Indictment.

74. Facts and figures showing the credits and deductions, if any, made and credited, on said \$14,423.42 before calculating the "normal income tax" in the sum of \$3875.84, alleged in said Count Four.

75. Facts and figures showing the credits and deductions, if any, made and credited, on said \$14,423.42 before calculating the "surtax".

76. Facts and figures showing the "net income" which was subject to the "Normal Tax", and facts and figures showing the "surtax net income."

77. Facts and figures showing what part or portion of the alleged \$3875.84 which it is alleged that defendant Sam Ormont owed the United States of America as income tax for said year 1942, is "Normal Tax", and what portion is "Surtax".

78. A statement of dates and amounts of payments made by defendant Sam Ormont on account of the income tax on the said items comprising said \$14,423.42 alleged net income.

79. A statement of the dates and amounts of credits for payments to the Collector of Internal Revenue, on account [47] of the items, or any of them, comprising the alleged \$14,423.42 net income.

80. A statement of the dates and amounts of payments made by this defendant Sam Ormont on account of the alleged tax of \$3875.84.

81. A statement of the dates and amounts of credits, if any, which plaintiff made on said alleged tax of \$3875.84, by payments made by defendant Sam Ormont.

82. A statement of the portion, if any, of the alleged tax of \$3875.84 which was unpaid at the time said Indictment was rendered.

Said Motion is made and based upon the ground that said Indictment is uncertain and it is impossible to determine therefrom the basis of the figures alleged in said Indictment to constitute the "net income" or "net incomes" or the "tax due" or "taxes due", nor how or in what manner such figures were determined, and this defendant cannot properly plead to or prepare or present his defense to said Indictment and the several counts, thereof without the Bill of Particulars of the various items herein requested; and if compelled to go to trial without such Bill of Particulars, he will be taken by surprise when the evidence is presented by the plaintiff, and will not have sufficient time or opportunity to pre-

pare and present his defense in said case, and will not have sufficient time to examine and determine the correctness or incorrectness of the plaintiff's figures and calculations and basis of such figures and calculations.

Wherefore, this defendant prays that this Motion be granted and an order made accordingly.

DALY B. ROBNETT and
BENJAMIN F. KOSDON,
By /s/ DALY B. ROBNETT,
Attorneys for Defendant
Phillip Himmelfarb.

Notice of Hearing

To James M. Carter, United States Attorney:

You are hereby notified that the undersigned, attorneys for the defendant named in the foregoing Motion, will present said Motion to the above-entitled court on Monday, the 10th day of February, 1947, at the hour of ten o'clock a.m., or as soon thereafter as counsel can be heard.

Dated February 3, 1947.

DALY B. ROBNETT and
BENJAMIN F. KOSDON,
By /s/ DALY B. ROBNETT,
Attorneys for said defendant.

Received copy of the foregoing Motion and Notice of Hearing, this 3d day of February, 1947.

JAMES M. CARTER,
By /s/ WILLIAM STRONG,
Asst. United States Attorney.

[Endorsed]: Filed Feb. 3, 1947. [49]

[Title of District Court and Cause.]

MOTION FOR BILL OF PARTICULARS

Comes now the defendant, Sam Ormont, by his attorneys, Daly B. Robnett and Benjamin F. Kosdon, and moves the Court for an order requiring the United States of America, plaintiff, to furnish said defendant Sam Ormont, within a time to be therein specified, a written Bill of Particulars, in the above-entitled case, as to the following matters alleged in the Indictment herein to-wit:

1. Facts and figures showing the basis of the figure of \$36,982.52, which it is alleged in Count One of said Indictment was said defendant's "Net income for the said calendar year . . . for income tax purposes."
2. An itemized statement of the various items, sums and figures used by said plaintiff in determining that this defendant's net income for the calendar year of 1944 was the sum of \$36,982.52 for income tax purposes, as alleged in the said Count One of said Indictment.
3. An itemized statement of the sources from which derived, [50] and the several amounts and the various items comprising and forming the basis for the sum of \$36,982.52, and of each component part thereof, alleged to be the net income of this defendant for 1944, as set forth in said Count One of said Indictment.
4. An itemization of the portion of said alleged \$36,982.52 alleged in said Count One, which consti-

tuted the net income for the calculation of this defendant's "Normal Tax" as provided in Section 11 of Chapter 1 of Internal Revenue Code, as amended by "Individual Income Tax Act of 1944."

5. An itemization of the portion of the \$36,982.52 alleged in said Count One, which constituted the "surtax net income" of this defendant for the year 1944, as provided in Section 12 (a) of Chapter 1 of the Internal Revenue Code, and amendments thereto.

6. An itemization of the portion of the \$36,982.52 alleged in said Count One, which constituted the "Victory Tax Net Income" alleged in said Count One of said Indictment.

7. Facts, figures, items and sources showing the basis upon which plaintiff determined and alleges that this defendant's "net income for the said calendar year was the sum of \$36,982.52 for income tax purposes," in said Count One.

8. Facts, figures, items and sources showing the "gross income" of said defendant for said year 1944, from which plaintiff determined and alleges that "his net income for the said calendar year was the sum of \$36,982.52 for income tax purposes."

9. Facts, figures, items and nature of credits and deductions, if any, made from such "gross income" before [51] calculating, determining and alleging the "net income" subject to "normal tax", and likewise the credits and deductions, if any, made from such "gross income" before calculating and determining the "surtax net income" and likewise the

credits and deductions, if any, made from such "gross income" before calculating and determining the "Victory Tax Net Income."

10. Facts and figures showing the basis of the alleged income tax of this defendant in the total sum of \$18,143.12, as alleged in said Count One of said Indictment.

11. Facts and figures showing the credits and deductions, if any, made and credited, on said \$36,982.52 before calculating the "normal income tax" in the sum of \$18,143.12 alleged in said Count One.

12. Facts and figures showing the credits and deductions, if any, made and credited, on said \$36,982.52 before calculating the "surtax".

13. Facts and figures showing the credits and deductions, if any, made and credited, on said \$36,982.52, before calculating the alleged "Victory Tax".

14. Facts and figures showing the "net income" which was subject to the "Normal Tax"; and the facts and figures showing the "surtax net income"; and facts and figures showing the "Victory Tax net income."

15. Facts and figures showing what part or portion of the alleged \$18,143.12 which it is alleged this defendant owed the United States of America as income tax for said year 1944, is "Normal Tax", and what portion is "Surtax", and what portion is alleged "Victory Tax".

16. A statement of dates and amounts of payments made by this defendant on account of the income tax on the said items comprising said \$36,982.52 alleged net [52] income.
17. A statement of the dates and amounts of credits for payments to the Collector of Internal Revenue, on account of the items, or any of them, comprising the alleged \$36,982.52 net income.
18. A statement of the dates and amounts of payments made by this defendant on account of the alleged tax of \$18,143.52.
19. A statement of the dates and amounts of credits, if any, which plaintiff made on said alleged tax of \$18,143.52, by payments made by this defendant.
20. A statement of the portion, if any, of the alleged tax of \$18,143.52 which was unpaid at the time said Indictment was rendered.
21. Facts and figures showing the basis of the figure of \$17,752.65, which it is alleged in Count Two of said Indictment was defendant Phillip Himmelfarb's "Net income for the said calendar year."
22. An itemized statement of the various items, sums and figures used by said Plaintiff in determining the defendant Phillip Himmelfarb's net income for the calendar year of 1944 was the sum of \$17,752.65 for income tax purposes, as alleged in the said Count Two of said Indictment.

23. An itemized statement of the sources from which derived, and the several amounts and the various items comprising and forming the basis for the sum of \$17,752.65, and of each component part thereof, alleged to be the net income of defendant Phillip Himmelfarb for 1944, as set forth in said Count Two of said Indictment.

24. An itemization of the portion of said alleged \$17,752.65 [53] alleged in said Count Two, which constituted the net income for the calculation of defendant Phillip Himmelfarb's "Normal Tax" as provided in Section 11 of Chapter 1 of the Internal Revenue Code, as amended by "Individual Income Tax Act of 1944."

25. An itemization of the portion of the \$17,752.65 alleged in said Count Two, which constituted the "surtax net income" of defendant Phillip Himmelfarb for the year 1944, as provided in Section 12 (a) of Chapter 1 of the Internal Revenue Code, and amendments thereto.

26. An itemization of the portion of the \$17,752.65 alleged in said Count Two, which constituted the "Victory Tax Net Income" alleged in said Count Two of said indictment.

27. Facts, figures, items and sources showing the basis upon which plaintiff determined and alleges that defendant Phillip Himmelfarb's "net income for the said calendar year was the sum of \$17,752.65", in said Count Two.

28. Facts, figures, items and sources showing the "gross income" of defendant Phillip Himmelfarb

for said year 1944, from which plaintiff determined and alleges that "his net income for said calendar year was the sum of \$17,752.65."

29. Facts, figures, items and nature of credits and deductions, if any, made from such "gross income" before calculating, determining and alleging the "net income" subject to "normal tax", and likewise the credits and deductions, if any, made from such "gross income" before calculating and determining the "surtax net income" and likewise the credits and deductions, if any, made from such "gross income" before calculating and [54] determining the "Victory Tax Net Income."

30. Facts and figures showing the basis of the alleged income tax of defendant Phillip Himmelfarb in the total sum of \$5843.91. as alleged in said Count Two of said Indictment.

31. Facts and figures showing the credits and deduction, if any, made and credited, on said \$17,752.65 before calculating the "normal income tax" in the sum of \$5843.91 alleged in said Count Two.

32. Facts and figures showing the credits and deductions, if any, made and credited, on said \$17,752.65 before calculating the "surtax."

33. Facts and figures showing the credits and deductions, if any, made and credited, on said \$17,752.65, before calculating the alleged "Victory Tax".

34. Facts and figures showing the "net income" which was subject to the "Normal Tax"; and facts

and figures showing the "surtax net income"; and facts and figures showing the "Victory Tax net income."

35. Facts and figures showing what part or portion of the alleged \$5843.91 which it is alleged that defendant Phillip Himmelfarb owed the United States of America as income tax for said year 1944, is "Normal Tax", and what portion is "Surtax", and what portion is alleged "Victory Tax".

36. A statement of dates and amounts of payments made by defendant Phillip Himmelfarb on account of the income tax on the said items comprising said \$17,752.65 alleged net income.

37. A statement of the dates and amounts of credits for payments to the Collector of Internal Revenue, on account of the items, or any of them, comprising the alleged [55] \$17,752.65 net income.

38. A statement of the dates and amounts of payments made by this defendant Phillip Himmelfarb on account of the alleged tax of \$5843.91.

39. A statement of the dates and amounts of credits, if any, which plaintiff made on said alleged tax of \$5843.91, by payments made by defendant Phillip Himmelfarb.

40. A statement of the portion, if any, of the alleged tax of \$5843.91, which was unpaid at the time said Indictment was rendered.

41. Facts and figures showing the basis of the figure of \$30,512.86, which it is alleged in Count Three of said Indictment was defendant Sam Ormont's "Net income for the calendar year 1943 . . . for income tax purposes."

42. Facts and figures showing the basis of the figure of \$30,587.05, which it is alleged in said Count Three was defendant Sam Ormont's "Net income for the said calendar year . . . for victory tax purposes."

43. An itemized statement of the various items, sums and figures used by said plaintiff in determining that defendant Sam Ormont's net income for the calendar year of 1943 was the sum of \$30,512.86 for income tax purposes, as alleged in the said Count Three of said Indictment.

44. An itemized statement of the various items, sums and figures used by said plaintiff in determining that defendant Sam Ormont's net income for the calendar year of 1943 was the sum of \$30,587.05 for Victory Tax purposes, as alleged in the said Count Three of said Indictment.

45. An itemized statement of the sources from which derived, and the several amounts and the various items comprising [56] and forming the basis for the sum of \$30,512.86, and of each component part thereof, alleged to be the net income of defendant Sam Ormont for 1943 for income tax purposes, as set forth in said Count Three of said Indictment.

46. An itemized statement of the sources from which derived, and the several amounts and the various items comprising and forming the basis for the sum of \$30,587.05, and of each component part thereof, alleged to be the net income of defendant Sam Ormont for 1943 for Victory Tax purposes, as set forth in said Count Three of said Indictment.

47. An itemization of the portion of said alleged \$30,512.86 alleged in said Count Three, which constituted the net income for the calculation of defendant Sam Ormont's "Normal Tax" as provided in Section 11 of Chapter 1 of the Internal Revenue Code, as amended by "Individual Income Tax Act of 1943."

48. An itemization of the portion of the \$30,512.86 alleged in said Count Three, which constituted the "surtax net income" of defendant Sam Ormont for the year 1943, as provided in Section 12 (a) of Chapter 1 of the Internal Revenue Code, and amendments thereto.

49. Facts, figures, items and sources showing the basis upon which plaintiff determined and alleges that defendant Sam Ormont's "net income for the said calendar year was the sum of \$30,512.86 for income tax purposes," said Count Three.

50. Facts, figures, items and sources showing the basis upon which plaintiff determined and alleges that defendant Sam Ormont's "net income for said calendar year was the sum of \$30,587.05 for victory tax purposes," in [57] said Count Three.

51. Facts, figures, items and sources showing the "gross income" of defendant Sam Ormont for said year 1943, from which plaintiff determined and alleges that "his net income for the said calendar year was the sum of \$30,512.86 for income tax purposes."

52. Facts, figures, items and nature of credits and deductions, if any, made from such "gross

income" before calculating, determining and alleging the "net income" subject to "normal tax", and likewise the credits and deductions, if any, made from such "gross income" before calculating and determining the "surtax net income", and likewise the credits and deductions, if any, made from such "gross income" before calculating and determining the "Victory Tax Net Income."

53. Facts and figures showing the basis of the alleged income tax of defendant Sam Ormont in the total sum of \$13,461.29, as alleged in said Count Three of said Indictment.

54. Facts and figures showing the credits and deductions, if any, made and credited, on said \$30,512.86 before calculating the "normal income tax" in the sum of \$13,461.29 alleged in said Count Three.

55. Facts and figures showing the credits and deductions, if any, made and credited, on said \$30,512.86 before calculating the "surtax".

56. Facts and figures showing the "net income" which was subject to the "Normal Tax"; and facts and figures showing the "surtax net income"; and facts and figures showing the "Victory Tax net income."

57. Facts and figures showing what part or portion of the alleged \$13,461.29 which it is alleged defendant Sam Ormont [58] owed the United States of America as income and victory tax for said year 1943, is "Normal Tax", and what portion is "Surtax", and what portion is alleged "Victory Tax".

58. A statement of dates and amounts of payments made by defendant Sam Ormont on account of the income tax on the said items comprising said \$30,512.86 alleged net income for income tax purposes.

59. A statement of dates and amounts of payments made by defendant Sam Ormont on account of the victory tax on the said items comprising said \$30,587.05 alleged net income for victory tax purposes.

60. A statement of the dates and amounts of credits for payments to the Collector of Internal Revenue, on account of the items, or any of them, comprising the alleged \$30,512.86 net income for income tax purposes.

61. A statement of the dates and amounts of credits for payments to the Collector of Internal Revenue, on account of the items, or any of them, comprising the alleged \$30,587.05 net income for victory tax purposes.

62. A statement of the dates and amounts of payments made by defendant Sam Ormont on account of the alleged tax of \$13,461.29.

63. A statement of the dates and amounts of credits, if any, which plaintiff made on said alleged tax of \$13,461.29, by payments made by the defendant Sam Ormont.

64. A statement of the portion, if any, of the alleged tax of \$13,461.29 which was unpaid at the time said Indictment was rendered.

65. Facts and figures showing the basis of the figure of \$14,423.42, which it is alleged in Count Four of said Indictment was defendant Sam Ormont's "Net income for the said calendar year" of 1942. [59]

66. An itemized statement of the various items, sums and figures used by said plaintiff in determining that Sam Ormont's net income for the calendar year of 1942 was the sum of \$14,423.42, as alleged in the said Count Four of said Indictment.

67. An itemized statement of the sources from which derived, and the several amounts and the various items comprising and forming the basis for the sum of \$14,423.42, and of each component part thereof, alleged to be the net income of defendant Sam Ormont for 1942, as set forth in said Count Four of said Indictment.

68. An itemization of the portion of said alleged \$14,423.42 alleged in said Count Four, which constituted the net income for the calculation of defendant Sam Ormont's "Normal Tax" as provided in Section 11 of Chapter 1 of the Internal Revenue Code.

69. An itemization of the portion of the \$14,423.42 alleged in said Count Four, which constituted the "surtax net income" of defendant Sam Ormont for the year 1942, as provided in Section 12 (a) of Chapter 1 of the Internal Revenue Code, and amendments thereto.

70. Facts, figures, items and sources showing the basis upon which plaintiff determined and alleges that defendant Sam Ormont's "net income for the said calendar year was the sum of \$14,423.42", in said Count Four.

71. Facts, figures, items and sources showing the "gross income" of defendant Sam Ormont for said year 1942, from which plaintiff determined and alleges that "his net income for the said calendar year was the sum of \$14,423.42."

72. Facts, figures, items and nature of credits and deductions, if any, made from such "gross income" before [60] calculating, determining and alleging the "net income" subject to "normal tax". and likewise the credits and deductions, if any, made from such "gross income" before calculating and determining the "surtax net income."

73. Facts and figures showing the basis of the alleged income tax of defendant Sam Ormont in the total sum of \$3875.84, as alleged in said Count Four of said Indictment.

74. Facts and figures showing the credits and deductions, if any, made and credited, on said \$14,423.42 before calculating the "normal income tax" in the sum of \$3875.84, alleged in said Count Four.

75. Facts and figures showing the credits and deduction, if any, made and credited, on said \$14,423.42 before calculating the "surtax".

76. Facts and figures showing the "net income" which was subject to the "Normal Tax", and facts and figures showing the "surtax net income."

77. Facts and figures showing what part or portion of the alleged \$3875.84 which it is alleged that defendant Sam Ormont owed the United States of America as income tax for said year 1942, is "Normal Tax", and what portion is "Surtax".

78. A statement of dates and amounts of payments made by defendant Sam Ormont on account of the income tax on the said items comprising said \$14,423.42 alleged net income.

79. A statement of the dates and amounts of credits for payments to the Collector of Internal Revenue, on account of the items, or any of them, comprising the alleged \$14,423.42 net income. [61]

80. A statement of the dates and amounts of payments made by this defendant Sam Ormont on account of the alleged tax of \$3875.84.

81. A statement of the dates and amounts of credits, if any, which plaintiff made on said alleged tax of \$3875.84, by payments made by defendant Sam Ormont.

82. A statement of the portion, if any, of the alleged tax of \$3875.84 which was unpaid at the time said Indictment was rendered.

Said motion is made and based upon the ground that the said Indictment is uncertain and it is impossible to determine therefrom the basis of the

figures alleged in said Indictment to constitute the "net income" or "net incomes" or the "tax due" or "taxes due," nor how or in what manner such figures were determined, and this defendant cannot properly plead to or prepare or present his defense to said Indictment and the several counts thereof without the Bill of Particulars of the various items herein requested; and if compelled to go to trial without such Bill of Particulars, he will be taken by surprise when the evidence is presented by the plaintiff, and will not have sufficient time or opportunity to prepare and present his defense in said case, and will not have sufficient time to examine and determine the correctness or incorrectness of the plaintiff's figures and calculations and basis of such figures and calculations.

Wherefore, this defendant prays that this Motion be granted and an order made accordingly.

DALY B. ROBNETT and
BENJAMIN F. KOSDON,

By /s/ DALY B. ROBNETT,
Attorneys for Defendant
Sam Ormont.

Notice of Hearing

To James M. Carter, United States Attorney:

You are hereby notified that the undersigned, attorneys for the defendant named in the foregoing Motion, will present said Motion to the above-entitled court on Monday, the 10th day of February, 1947, at the hour of ten o'clock a.m., or as soon thereafter as counsel can be heard.

Dated February 3, 1947.

DALY B. ROBNETT and
BENJAMIN F. KOSDON,
By /s/ DALY B. ROBNETT,
Attorneys for said defendant.

Received copy of the foregoing Motion and Notice of Hearing, this 3rd day of February, 1947.

JAMES M. CARTER,
By /s/ WILLIAM STRONG,
Asst. United States Attorney.

[Endorsed]: Filed Feb. 3, 1947. [63]

At a stated term, to-wit: The February term. A. D. 1947, of the District Court of the United States of America, within and for the Central Division of Southern California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 12th day of March in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Wm. C. Mathes,
District Judge.

[Title of Cause.]

ORDER DENYING MOTION TO DISMISS

This cause coming on for hearing motion to dismiss and motion for a Bill of Particulars; Wm. Strong, Assistant U. S. Attorney, appearing as counsel for the Government; Daly B. Robnett, and Benj. F. Kosdon, Esqs., appearing as counsel for the defendants Sam Ormont and Phillip Himmelfarb, who are both present; it is ordered that motion to dismiss as to each defendant is denied.

Motion for a Bill of Particulars is presented on authorities filed; Attorney Strong replies to the Court's questions; and motion of Defendant Ormont for a Bill of Particulars is granted and that the same be furnished in ten days, the said order being as follows: * * *

It is ordered that the cause is hereby continued to March 28, 1947, at 10 a.m., for plea.

[Title of District Court and Cause.]

ORDER ON MOTIONS OF DEFENDANTS TO DISMISS THE INDICTMENT AND FOR A BILL OF PARTICULARS

This cause having heretofore come before the court for hearing on separate motions of the defendants to dismiss the indictment and for a bill of particulars, and the motions having been heard and submitted for decision,

It Is Now Ordered:

- (1) That the motion of defendant Sam Ormont to dismiss the indictment be and is hereby denied;
- (2) That the motion of defendant Sam Ormont for a bill of particulars be and is hereby granted to the extent that plaintiff is hereby required to furnish defendant Sam Ormont, within ten days from the date of this order, a bill of particulars setting forth (a) the claimed true amount of defendant Sam Ormont's "gross income" for the calendar years 1942, 1943 and 1944; (b) an itemization of the allowable credits and deductions, if any, claimed to be [65] properly deductible from the alleged true "gross income" in determining the alleged true "net income" of defendant Sam Ormont, subject to "normal tax", "surtax" and "Victory Tax" for the calendar years 1942, 1943 and 1944; and (c) an itemization of the allowable credits and deductions and exemptions, if any, claimed to be properly deductible from the alleged true "net income" for Federal income tax purposes for the

calendar years 1942, 1943 and 1944 in determining the alleged true amount of Federal income tax due the United States of America by defendant Sam Ormont for the calendar years 1942, 1943 and 1944.

(3) That the motion of defendant Sam Ormont for a bill of particulars be and is hereby in all other respects denied.

(4) That the motion of defendant Phillip Himmelfarb to dismiss the indictment be and is hereby denied;

(5) That the motion of defendant Phillip Himmelfarb for a bill of particulars be and is hereby granted to the extent that plaintiff is hereby required to furnish defendant Phillip Himmelfarb, within ten days from the date of this order, a bill of particulars setting forth (a) the claimed true amount of defendant Phillip Himmelfarb's "gross income" for the calendar year 1944; (b) an itemization of the allowable credits and deductions, if any, claimed to be properly deductible from the alleged true "gross income" in determining the alleged true "net income" of defendant Phillip Himmelfarb, subject to "normal tax", "surtax" and "Victory Tax" for the calendar year 1944; and (c) an itemization of the allowable credits and deductions and exemptions, if any, claimed to be properly deductible from the alleged true "net income" for Federal income tax purposes for the calendar year 1944 in determining the alleged true amount of Federal income tax due the United States of America by [66] defendant Phillip Himmelfarb for the calendar year 1944.

(6) That the motion of defendant Phillip Himmelfarb for a bill of particulars be and is hereby in all other respects denied.

Done in open court March 12, 1947.

/s/ WM. C. MATHES,

United States District Judge.

[Endorsed]: Filed March 12, 1947. [67]

[Title of District Court and Cause.]

BILL OF PARTICULARS

Comes now the plaintiff, the United States of America, by its attorneys James M. Carter, United States Attorney, and Howard V. Calverly and William Strong, Assistant United States Attorneys, and furnishes the within particulars in conformance with the order of the Honorable William C. Mathes, dated March 12, 1947:

I.

Sam Ormont—year ending December 31, 1942

	Income Tax, net Income
True gross income.....	\$15,039.83
Allowable deductions	616.41

Net income	\$14,423.42
Personal exemption (head of family).....	\$ 1,200.00
Surtax net income.....	13,223.42
Earned income credit.....	300.00

Balance subject to normal tax.....	\$12,923.42

II.

Sam Ormont—year ending December 31, 1943

	Income tax net Income	Victory tax net Income
True gross income.....	\$31,122.92	\$30,937.05
Allowable deductions	610.06	350.00
	<hr/>	<hr/>
Personal exemption.....	\$30,512.86	\$30,587.05
	1,200.00	<hr/>
Surtax net income.....	\$29,312.86	
Earned income credit.....	300.00	
	<hr/>	<hr/>
Balance subject to normal tax.....	\$29,012.86	
Specific exemption for Victory tax.....		624.00
	<hr/>	<hr/>
Income subject to victory tax.....		\$29,693.05

III.

Sam Ormont—year ending December 31, 1944

True gross income.....	\$37,482.52
Allowable deductions	500.00
	<hr/>
True net income.....	\$36,982.52
Surtax exemption	1,000.00
	<hr/>
Surtax net income.....	\$35,982.52
	<hr/> <hr/>
True net income as above.....	\$36,982.52
Normal tax exemption	500.00
	<hr/>
Normal tax net income.....	\$36,482.52
	<hr/> <hr/>

IV.

Phillip Himmelfarb—year ending December 31, 1944

	Philip Himmelfarb	Ruth Himmelfarb	Joint Phillip & Ruth
True gross income.....	\$18,252.65	\$18,252.64	\$36,505.29
Allowable deductions.....	500.00	500.00	1,000.00
True net income.....	\$17,752.65	\$17,752.64	\$35,505.29
Surtax exemptions	1,500.00	1,000.00	2,500.00
Surtax net income.....	\$16,252.65	\$16,752.64	\$33,005.29
True net income.....	\$17,752.65	\$17,752.64	\$35,505.29
Normal tax exemption	500.00	500.00	1,000.00
Normal tax net income.....	\$17,252.65	\$17,252.64	\$34,505.29

The within particulars are furnished by the plaintiff with no restriction upon the rights of the plaintiff to prove such further and other facts as appear necessary in the trial of this cause.

Respectfully submitted,

JAMES M. CARTER,

United States Attorney.

HOWARD V. CALVERLY,

Assistant U. S. Attorney,

Chief, Criminal Division.

WILLIAM STRONG,

Assistant U. S. Attorney.

Attorneys for Plaintiff.

By /s/ WILLIAM STRONG,

Assistant U. S. Attorney.

[Affidavit of service by mail attached.]

[Endorsed]: Filed March 21, 1947.

As a stated term, to wit: The February Term, A. D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 28th day of March in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Wm. C. Mathes,
District Judge.

[Title of Cause.]

MINUTE ORDER, MARCH 28, 1947

This cause coming on for plea of both defendants Sam Ormont and Phillip Himmelfarb; Wm. Strong, Assistant U. S. Attorney, appearing as counsel for the Government; Daly B. Robnett and Benj. F. Kosdon, Esqs., appearing as counsel for the said defendants, who are present; all having been present at 10 a. m.; defendants request that pleas be taken now; and counsel for defendants having waived reading of the Indictment, Defendant Ormont pleads not guilty to counts 1, 3 and 4 and guilty to count 2, and Defendant Himmelfarb pleads not guilty to counts 1, 2. Attorney Robnett suggests a continuance until April 15, 1947.

It is ordered that the cause is hereby set for trial on May 13, 1947, at 10 a. m., before Judge Weinberger. [72]

In the District Court of the United States in and for
the Southern District of California, Central
Division

No. 19138 Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAM ORMONT and PHILLIP HIMMELFARB,
Defendants.

and

No. 19094 Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAM ORMONT and PHILLIP HIMMELFARB,
dba ACME MEAT COMPANY,
Defendants.

**MOTION TO CONSOLIDATE CASES
FOR TRIAL**

To: Daly B. Robnett and Benjamin F. Kosdon,
Attorneys for Defendants, 1007 Spring Arcade
Building, 541 S. Spring St., Los Angeles 13,
Calif.:

Please Take Notice that on May 13, 1947, at 10:00
a. m., or as soon thereafter as the matter can be
heard, a motion will be made before the Honorable
Jacob Weinberger, Judge of the District Court of

the United States, for the Southern District of California, to consolidate the above cases for trial.

JAMES M. CARTER,
United States Attorney.

HOWARD V. CALVERLY and
WILLIAM STRONG,
Asst. U. S. Attorneys.

By /s/ WILLIAM STRONG,
Assistant U. S. Attorney.

[Affidavit of service by mail attached.]

[Endorsed]: Filed May 2, 1947.

[Title of District Court and Causes.]

POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO CONSOLIDATE FOR
TRIAL THE ABOVE CAUSES OF ACTION

Rule 13 of the Rules of Criminal Procedure provides:

“The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.”

Rule 8 provides:

“(a) Joinder of Offenses. Two or more offenses may be charged in the same indictment

or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

"This rule is substantially a restatement of existing law, 18 U. S. C. 557 (Indictments and presentments; joinder of charges).

"(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count."

18 U. S. C. A. § 557 provides as follows:

"Same; joinder of charges. When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated. (R. S. § 1024)."

It would serve no useful purpose to cite extensively from the numerous authorities and cases which permit the consolidation of indictments for trial in this case.

Obviously the different offenses charged in each of the two indictments here could have all been joined in one indictment. The defendants are the same in all of the counts in each of the indictments, and the offenses [76] arise out of almost precisely the same series of transactions and facts.

The proof as to each of the indictments would be almost precisely the same. Evidence which discloses the commission of the offenses with reference to overcharges for sales of meat in violation of the Emergency Price Control Act will be presented in support of the conspiracy count, charging a conspiracy to violate the Emergency Price Control Act. In proof of both the substantive violations and the conspiracy in that respect evidence as to the income of the defendants, the income tax returns and income tax disclosures will also be offered.

In support of the income tax evasion indictment, the same evidence will be used to prove that the defendants earned the sums which the Government charges them with having received, and that they unlawfully failed to make proper disclosures of their income and pay the proper tax.

We do not wish to burden this Court with extensive reading of applicable authorities, which are collected in considerable detail in 18 U. S. C. A. § 557.

Manifestly, in this instance, consolidation of the indictments for trial is not only wholly proper, but constitutes the most feasible and only practical course of trying these defendants. The consolidation is within the discretion of the trial court: Since both defendants are charged in each count of both indictments, since the offenses charged are "of the same or similar character," are based substantially "on the same act or transaction," and are manifestly "two or more acts or transactions connected together or constituting parts of a common scheme or plan" (see Rule 8, *supra*). The requirement of Rule 13, which permits the trial of indictments together "if the offenses, and the defendants * * * could have been joined in a single indictment * * *" has been fully met.

Separate trials under each of the indictments would produce unnecessary delay, waste of time, and waste of money, since the second trial would in effect be a complete repetition of the first. [77]

It is respectfully submitted that the Government's motion for consolidation of the two above-mentioned indictments for trial should be granted.

Respectfully submitted,

JAMES M. CARTER,

United States Attorney.

By /s/ WILLIAM STRONG,

Assistant U. S. Attorney.

Attorneys for Plaintiff.

[Affidavit of service by mail attached.]

[Endorsed]: Filed May 9, 1947. [78]

At a stated term, to wit: The February Term, A. D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 14th day of May in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Jacob Weinberger,
District Judge.

[Title of Causes.]

ORDER DENYING CONSOLIDATION

These causes coming on for ruling on motion of plaintiff filed May 2, 1947, to consolidate cases Nos. 19,094-Crim. and 19,138-Crim.; T. G. Klinger, Assistant U. S. Attorney, appearing as counsel for the Government; Benjamin F. Kosdon and Daly B. Robnett, Esqs, appearing as counsel for the defendants, who are both present on bond:

William Katz, Esq., appears and states Defendant Himmelfarb has consulted with him and that the said defendant desires separate counsel, and that a formal substitution will be filed substituting new counsel, which may or may not be William Katz, Esq., but that the said defendant wishes Attorney Katz to appear for him at this time. Attorney Robnett states he has no objection and the Court approves the said substitution and relieves Messrs Robnett and Kosdon from representing Defendant Himmelfarb further.

The Court makes a statement of its views and it is ordered that the motion to consolidate is hereby denied.

In the District Court of the United States in and
for the Southern District of California, Central
Division

No. 19138

Sec. 145(b) Internal Revenue Code;
26 U. S. C. 145(b)

UNITED STATES OF AMERICA,
Plaintiff,
vs.

SAM ORMONT and PHILLIP HIMMELFARB,
Defendants.

INSTRUCTIONS REQUESTED BY THE
DEFENDANT SAM ORMONT

The defendant Sam Ormont hereby requests the
Court to give the jury the following instructions.

BENJAMIN F. KOSDON and
DALY B. ROBNETT,
By /s/ DALY B. ROBNETT,
Attorneys for Defendant.

7/13/47.

Refused or covered.

PEIRSON M. HALL,
Judge.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed that the defendant is not
charged with concealing or attempting to conceal
the gross or net income received by him, or the

sources thereof, but with willfully attempting to defeat and evade income tax. Therefore, if you find from the evidence that the defendant did not attempt to evade the income tax due or owing by him, you must find the defendant not guilty, irrespective of whether the defendant did or did not conceal or attempt to conceal the true and correct gross or net income received by him.

Section 145(b), Internal Revenue Code, 26 U.S.C. 145 (b); Spies v. U. S., 317 U. S. 492.

Requested by Jury Instruction No. X12
of Defendant Sam Ormont

To establish its case, the Government must prove not only an attempt by the defendants wilfully to defraud it, but also that a tax in addition to what the defendants had already paid remains due and owing.

U. S. vs. Schenck, 126 Fed (2d) 702;
Gleckman vs. U. S., 80 Fed (2d) 394;
Tinkoff vs. U. S., 86 Fed (2d) 868;
Hargrove vs. U. S., 67 Fed (2d) 820;
Rose vs. U. S., 128 Fed. (2d) 820;
Rose vs. U. S., 128 Fed (2d) 622 and 626.

Requested Jury Instruction No. X10
of Defendant Sam Ormont

You are instructed that if you find from the evidence that defendant Sam Ormont paid all or a substantial part of the income tax due and owing by him for the calendar year 1944 or paid an amount

in excess of the income tax due and owing by him for the calendar year 1944, you must find the defendant Sam Ormont not guilty of Count 1 of the indictment.

Section 145(b) Internal Revenue Code, 26 U. S. C. 145(b);
Gleckman vs. U. S., 80 F. (2d) 394, 297 U. S. 709;
U. S. vs. Schenck, 126 F. (2d) 702, 316 U. S. 705;
Rose vs. U. S., 128 F. (2d) 622, 317 U. S. 651.

Requested Jury Instruction No. 2
of Defendant Sam Ormont

You are instructed that the law presumes the acts of all men have been rightfully, properly and honestly performed, and that the acts shown by the evidence to have been performed by the defendant were performed properly and honestly and by reason of honest and proper motives, unless the contrary is established to your satisfaction beyond a reasonable doubt.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed to return a verdict of Not Guilty as to Count One of said indictment.

Requested Jury Instruction No. 2
of Defendant Sam Ormont

Reasonable doubt

You are instructed that the law does not require any defendant to prove his innocence, which in

many cases might be impossible, but on the contrary, the law requires the Government to establish any such guilt by legal evidence and beyond a reasonable doubt. The presumption of innocence goes with the defendant throughout the whole trial, and such presumption outweighs and overbalances all suspicions and suppositions and can only be destroyed by proof of guilt beyond a reasonable doubt.

You are instructed that the presumption of innocence with which the defendant is at all times clothed, is not a mere form to be destroyed by you at pleasure, but that it is an essential substantial part of the law and binding on you in this case, and it is your duty in this case to give the defendant the full benefit of this presumption and to acquit the defendant unless the evidence in the case convinces you of his guilt as charged, beyond a reasonable doubt.

If you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence, you should do so, and in that case find the defendant not guilty. You cannot find the defendant guilty unless, from all the evidence, you believe him guilty beyond a reasonable doubt.

A reasonable doubt is a doubt based on reason and which is reasonable in view of all the evidence, and if, after an impartial comparison and consideration of all the evidence, or from a want of sufficient evidence on behalf of the Government to convince you of the truth of the charge, you can candidly say that you are not satisfied of the defendant's guilt, you have a reasonable doubt; but

if, after such impartial comparison and consideration of all the evidence, you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt.

By such reasonable doubt, you are not to understand that all doubt is to be excluded; it is impossible in the determination of these questions to be absolutely certain. You are required to decide the question submitted to you upon the strong probabilities of the case, and to justify a conviction the probabilities must be so strong as not to exclude all doubt or possibility of error, but such as to exclude reasonable doubt.

When, weighing all the evidence, you have an abiding conviction and belief that the defendant is guilty, it is your duty to convict, and no sympathy justifies you in seeking for doubts by any strained or unreasonable construction or interpretation of the evidence or facts.

Reasonable doubt is not mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

Requested Jury Instruction No.....
of Defendant Sam Ormont

It is your duty to try this case fairly and impartially between the government and the defendant, upon the evidence before you, and upon that alone. You must not permit any prejudice to enter into your deliberation as to the guilt or innocence of the defendant. The nature of the charge should not be permitted by you to influence your judgment one way or the other as to whether or not the defendant is guilty as charged. Our law presumes every person charged with crime innocent until proven guilty, and no person can be found guilty of any offense unless his guilt is first established to a moral certainty and an abiding conviction and beyond all reasonable doubt.

Requested Jury Instruction No.....
of Defendant Sam Ormont

The mere fact that an indictment has been filed charging the defendant with a crime does not itself raise any presumption or inference as to the guilt of the defendant. The mere fact that he has been brought into court by the ordinary criminal process and is here on trial, should not be considered by you as any evidence whatsoever of his guilt.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed that the defendant in this case is entitled to the individual opinion of each

member of this jury and that no member of this jury should vote for a conviction of the defendant because of the opinion of the other members of the jury so long as he has a reasonable doubt as to the guilt of the defendant.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed that the presumption of innocence is not a mere matter of form, to be disregarded by you at your pleasure, but is an essential, substantial part of the law of the land, and binding upon you in this case, and it is your duty to give the defendants the full benefit of this presumption and to acquit him, unless the evidence in the case convinces you beyond all reasonable doubt of the guilt of the defendant.

Requested Jury Instruction No.....
of Defendant Sam Ormont

The jury is instructed that each essential independent fact necessary to complete a chain or series of independent facts tending to establish a presumption of guilt, should be established to the same degree of certainty as the main fact which these independent circumstances taken together tend to establish, that is, each essential independent fact in the chain or series of facts relied upon to establish the main fact, must be established to a moral certainty and beyond a reasonable doubt and to the entire satisfaction of the jury. The circumstances must all concur to show that the defendant com-

mitted the crime charged and must all be inconsistent with any other rational conclusion and must exclude to a moral certainty and to the entire satisfaction of the jury and other hypothesis but the single one of guilt.

Requested Jury Instruction No.....
of Defendant Sam Ormont

It is a recognized principle of our system of law that in order to convict a defendant, the facts proven must not only be consistent with the theory of guilt, but inconsistent with any reasonable theory of innocence, and this I charge is the law.

Requested Jury Instruction No.....
of Defendant Sam Ormont

It is not your duty to look for some theory upon which to convict the defendant, but, on the contrary, it is your duty and the law requires you to, if you can reasonably do so, reconcile any and all circumstances that have been shown with the innocence of the defendant, and so acquit him.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed that where two or more equally reasonable inferences may be drawn from a fact shown, that inference leading to a conclusion of innocence should be accepted, rather than one leading to a conclusion of guilt.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed that if one set or chain of circumstances leads to two opposing conclusions, one pointing to the guilt, the other to the innocence of the defendant, and the jury has any reasonable doubt as to which of such conclusions the chain of circumstances leads, a reasonable doubt is thereby created, and the defendant should be acquitted.

Requested Jury Instruction No.....
of Defendant Sam Ormont

It is the duty of the jury to enter upon the consideration of each circumstance proven, having in their minds the presumption that defendants are innocent, and in considering each fact or circumstance they should apply it to a presumption of innocence, and if such factor circumstance, when considered with all the evidence in the case, can be explained consistently with innocence, it is their duty to so explain it.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You cannot base a verdict of guilt upon extra judicial oral admissions, or statements of a defendant alone, unless there is other evidence independent of such extra-judicial oral admissions or statements which establishes the body of the crime with which defendant is charged, or what is known as the corpus delicti, and if you do not believe after a considera-

tion of all the evidence that the body of the crime or the corpus delicti is established by evidence other than such extra-judicial oral admissions or statements, then and in that event, you cannot consider such extra-judicial admissions or statements for any purpose.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed that evidence of a defendant's good character is in the same category as other factual evidence and must be considered by you in your deliberations and may of itself, if believed by you, create a reasonable doubt where otherwise no reasonable doubt would exist.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed that under the Internal Revenue law, a partnership or a joint venture may elect what is known as a fiscal year, consisting of any period not exceeding twelve months other than the calendar year, for calculating, reporting and paying income tax, and in the event of such election and establishment of a fiscal year which does not conform to the calendar year, the persons constituting such partnership or joint venture are not required to pay for the income from such partnership or joint venture until the 15th day of March of the calendar year following the last day of such fiscal year. For instance, if you should find from the evidence in this case that the defendants were

co-partners or joint venturers and from such co-partnership or joint venture derived an income, and if you further find that such co-partnership or joint venture had elected to pay under a fiscal year commencing on May 1, 1944 and ending on April 30, 1945, then and in that event the said defendants were not required to pay the income tax on the income from such partnership or joint venture for said fiscal year until on or before the 15th day of March, 1946.

Requested Jury Instruction No.....
of Defendant Sam Ormont

If you find from the evidence in this case that defendant Sam Ormont, prior to the filing of the indictment, bore a good general reputation in the community in which he lived, for truth, honesty and fair dealing, such good general reputation is of itself sufficient to create a reasonable doubt as to his guilt. And if you entertain a reasonable doubt as to the guilt or innocence of the defendant Sam Ormont because of his good general reputation, or because of any other reason or fact, it is your duty to find him not guilty.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed that it is neither criminal nor unlawful for a person to do, or to agree to do, that which the law does not prohibit but recognizes may be lawfully done. So if you believe from the evidence in this case, or if you entertain a reasonable

doubt, that whatever act or acts was or were done by the defendant was or were done, not with any criminal intent or not for the purpose of doing or performing any unlawful act, but, on the other hand, was or were done honestly and with an honest intent and purpose and in the belief that such act or acts was or were proper and lawful, then I instruct you that no crime has been committed, and it will be your duty to find the defendant Sam Ormont not guilty.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed that the argument of the United States Attorney is not evidence, and is not entitled to any additional weight or respect by reason of the fact that such argument is made by such governmental official.

Requested Jury Instruction No.....
of Defendant Sam Ormont

In order to convict the defendant Sam Ormont upon the evidence of circumstances, it is necessary not only that all the circumstances concur to show beyond a reasonable doubt that a crime was committed as alleged in the indictment, but that the defendant Sam Ormont was the one who committed such crime and that the circumstances are inconsistent with any other rational conclusion. It is not sufficient that the circumstances prove, coincide with, account for, and therefore render probable

the theory sought to be established by the prosecution, but they must exclude to a moral certainty every other theory but the single one of guilt, or the jury must find the defendant Sam Ormont not guilty.

Requested Jury Instruction No.....
of Defendant Sam Ormont

If, after a consideration of the whole case, any juror shall entertain a reasonable doubt of the guilt of the defendant Sam Ormont, it is the duty of such juror so entertaining such reasonable doubt to vote for a verdict of "not guilty."

The defendant Sam Ormont is presumed to be innocent until proven guilty; that presumption accompanies him throughout the trial; it goes with you to your retirement to consider your verdict and operates until you have arrived at a verdict. This presumption will avail to acquit the defendant Sam Ormont unless it be overcome by sufficient proof of his guilt to convince you, and each of you, to a moral certainty and beyond all reasonable doubt of his guilt. You must examine the evidence in the light of presumption of innocence, and unless you find the evidence sufficiently strong to overcome this presumption, and, further, to satisfy you beyond all reasonable doubt of the guilt of the defendant Sam Ormont, he is entitled to a verdict of acquittal at your hands.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed that if you find from the evidence that defendant Sam Ormont paid all of the income tax due and owing by him for the calendar year 1944, or paid an amount in excess of the income and victory tax due and owing by him for the calendar year 1944, you must find the defendant Sam Ormont not guilty of Count 1 of the indictment.

Section 145(b) Internal Revenue Code, 26
U. S. C. 145(b);
Gleckman vs. U. S., 80 F. (2d) 394, 297 U.
S. 709;
U. S. vs. Schenck, 126 F. (2d) 702, 316 U.
S. 705;
Rose vs. U. S., 128 F. (2d) 622, 317 U. S. 651.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed that the defendant Sam Ormont is not charged with concealing or attempting to conceal the gross or net income received by him, or the sources thereof, but with willfully attempting to defeat and evade income tax. Therefore, if you find from the evidence that defendant Sam Ormont did not attempt to evade the income tax due or owing by him, you must find him not guilty, irrespective of whether he did or did not conceal or attempt to conceal the true and correct gross or net income received by him.

Section 145(b) Internal Revenue Code, 26
U. S. C. 145(b);
Spies vs. U. S., 317 U. S. 492.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed that one of the essential elements of the proof of evasion of income tax is a wilful intent; that is, actual knowledge of the existence of the obligation and a specific wrongful intent to evade payment thereof. If you find from the evidence that the defendant Sam Ormont did not have actual knowledge of the existence of an obligation to pay any income tax in addition to the income tax paid by him, if such obligation actually existed, or that the defendant Sam Ormont did not have a specific wrongful intent to evade such obligation, you must find him not guilty.

Hargrove vs. U. S., 67 F. (2d) 820;
Malone vs. U. S., 94 F. (2d) 281, 304 U. S.
562;
Spies vs. U. S., 317 U. S. 492.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed that fraud is actual intentional wrongdoing, and the intent required is a specific purpose to evade a tax believed to be owing. Before you can convict the defendant, you must find from the evidence beyond a reasonable doubt that the return prepared by the defendant must not only be false and fraudulent, but that by such false and fraudulent return the defendant committed an actual intentional wrongdoing and that the

intent was a specific purpose to evade a tax believed to be owing. Mere negligence does not establish either.

Griffith vs. Commissioner, 7th Circ., 50 F. (2d) 782;

Mitchell vs. Commissioner of Internal Revenue, 188 F. (2d) 308.

Requested Jury Instruction No.....
of Defendant Sam Ormont

Livestock is an agricultural commodity and is a product of the soil.

3 C. J. S.—Page 366;
50 U. S. C.—A, Page.....

Requested Jury Instruction No.....
of Defendant Sam Ormont

A person whose gross income arises solely from the business of growing and selling products of the soil is exempt from the requirement of keeping permanent books of account or records.

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Page 3105.

Requested Jury Instruction No.....
of Defendant Sam Ormont

You are instructed that the indictment is a mere charge or accusation against the defendant, and is not any evidence of his guilt, and no juror in this case should permit himself or herself to be, to any

extent, influenced against the defendant because of, or on account of, the indictment. An indictment is merely a means of bringing a defendant to trial.

U. S. vs. Schanerman, 150 F. (2d) 941, 945, 946;

Little vs. U. S., 10th Circ., 73 F. (2d) 861, 864, 96 A. L. R. 889.

Requested Jury Instruction No.....
of Defendant Sam Ormont

If the taxpayer acts honestly under the advice of counsel or if the incorrect return is prepared by a Certified Public Accountant or a public accountant, who has knowledge of all the facts, the defendant is not guilty of any criminal intent.

D. W. Kuhn vs. U. S., 42 F. (2d) 210.

Requested Jury Instruction No.....
of Defendant Sam Ormont

The use of the word "attempt" in the Code indicates that Congress intended some wilful commission in addition to the wilful omission that make up the list of misdemeanors, before a taxpayer can be found guilty of a felony.

Spies vs. U. S., 317 U. S. 492.

Requested Jury Instruction No.....
of Defendant Sam Ormont

In weighing the testimony of Internal Revenue officers, greater care should be used than in weigh-

ing the testimony of ordinary witnesses because of the natural and unavoidable tendency of such officers to procure and remember with partiality such evidence as would be against defendant.

Reid's Branson Instruction to Juries p 61
Sec. 3319.

Requested Jury Instruction No.....
of Defendant Sam Ormont

If you find from the evidence in this case that defendant Sam Ormont, prior to the filing of the indictment, bore a good general reputation in the community in which he lived or transacted business, for truth, honesty and fair dealing, such good general reputation is of itself sufficient to create a reasonable doubt as to his guilt. And if you entertain a reasonable doubt as to the guilt or innocence of the defendant Sam Ormont because of his good general reputation, or because of any other reason or fact, it is your duty to find him not guilty.

Requested Jury Instruction No.....
of Defendant Sam Ormont

In order to convict the defendants or either of them upon any count of the indictment in this case, the burden is upon the Government to prove beyond all reasonable doubt that said defendant or defendants did wilfully and knowingly attempt to defeat and evade a substantial part of the income tax due and owing to the Government, and that

such defendant or defendants did defraud the Government of a substantial portion of the income tax due said Government from said defendant or defendants.

U. S. vs. Schenck, 126 Fed. (2d) 702;
Gleckman vs. U. S., 80 Fed. (2d) 394;
Tinkoff vs. U. S., 86 Fed. (2d) 868;
Hargrove vs. U. S., 67 Fed. (2d) 820;
Rose vs. U. S., 128 Fed. (2d) 622, 626.

**Requested Jury Instruction No. X-4
Of Defendant Sam Ormont**

In order to establish the guilt of either of the defendants, the government must prove beyond all reasonable doubt not only an attempt to wilfully defraud it, but also that such defendant did actually defraud the government of a substantial portion of the tax due from such defendant, and that such tax was not paid by such defendant.

U. S. v. Schenck, 126 Fed. (2d) 702;
Gleckman vs. U. S., 80 Fed. (2d) 394;
Tinkoff v. U. S., 86 Fed. (2d) 868;
Hargrove v. U. S., 67 Fed (2d) 820;
Rose v. U. S., 1728 Fed (2d) 622 to 626.

**Requested Jury Instruction No.
Of Defendant Sam Ormont**

The reporting and payment of tax by a taxpayer in other years, under a belief that that is when it is due, even though the taxpayer was wrong in such belief, nevertheless is a defense to a charge of the

kind embraced within the indictment in this case, for the reason that it shows that there was no "wilful" violation of the law. A violation of the Internal Revenue Code as charged in the case at bar must be a "wilful" violation in order to constitute a crime.

Hargrove v. U. S., 67 Fed (2d) 820;
Murray v. U. S., 117 Fed. (2) 40.

Requested Jury Instruction No.
Of Defendant Sam Ormont

An underestimate of one's income does not constitute a violation of the Internal Revenue Code, unless such underestimate was wilful and intentional.

U. S. v. Koppelman, 61 Fed. Supp. 1007.

Requested Jury Instruction No. X-9
Of Defendant Sam Ormont

Failure of a taxpayer to report income which he honestly believed was not taxable does not constitute a wilful violation of the Internal Revenue Code.

• U. S. v. LaFontaine, 54 Fed. (2d) 371;
Murray v. U. S., 117 Fed. (2) 40.

Requested Jury Instruction No. X-8
Of Defendant Sam Ormont

Failing to account and pay income tax in the proper year, and paying and accounting for the same in a different year by the taxpayer, and under his honest belief that that is when it is due does not constitute a violation of the Internal Revenue Code.

Hargrove v. U. S., 67 Fed. (2d) 820;
Spies v. U. S., 317 U. S. 492.

Requested Jury Instruction No.
Of Defendant Sam Ormont

In order for you to find the defendants or either of them guilty as charged in the various separate counts of the indictment in this case, the government must prove beyond all reasonable doubt the charges contained in said indictment and that the defendant or defendants against whom such charges are made wilfully and knowingly committed the acts therein complained of.

145(b) Internal Revenue Code;
Gleckman v. U. S., 80 Fed. (2d) 394;
Tinkoff v. U. S., 86 Fed. (2d) 868;
U. S. v. Schenck, 126 Fed (2d) 702;
Hargrove v. U. S., 67 Fed. (2d) 820;
Rose v. U. S., 128 Fed. (2d) 622 to 626;
Murray v. U. S., 117 Fed (2d) 40;
U. S. v. Skidmore, 123 Fed. (2d) 604;
Spies v. U. S., 317 U. S. 492.

Requested Jury Instruction No. X-6
Of Defendant Sam Ormont

To establish its case, the government must prove beyond a reasonable doubt that the defendants not only attempted to wilfully defraud the government, but that at the time the indictment in this case was returned, to-wit, on January 22, 1947, a tax in addition to the tax already paid by such defendant remained due and unpaid, and that the defendant knew that he owed such additional tax. You are instructed that in order to convict either of the defendants in this case under the charges embraced in the indict-

ment herein, the government must prove beyond all reasonable doubt that the alleged violations of said act were not only done by the defendant or defendants, but were done wilfully and knowingly, and not under an honest belief by the defendant that he had accounted and paid all tax legally due.

Requested Jury Instruction No. X-7
Of Defendant Sam Ormont

You are instructed that under the Internal Revenue Law, a partnership or joint venture may elect to use what is known as a fiscal year instead of a calendar year for the purpose of reporting and paying income tax on income derived from such partnership or joint venture. Such fiscal year may be any period not exceeding twelve months and is not required to conform to the calendar year. Where such fiscal year is so used, the taxpayer is not required to pay the tax owing thereon until on or before the 15th day of March of the year following the termination of such fiscal year. For instance, if you should find from the evidence in this case that the defendants were co-partners or joint venturers and derived an income therefrom, and if you further find that as such co-partners or joint venturers they elected to use a fiscal year commencing with the first day of May, 1944, and ending with the last day of April, 1945, then and in that event said defendants were not required under the law to account for or pay any income tax on such income until on or before the 15th day of March, 1946; and therefore, and as to any such income, the defendants would not be guilty of any crime charged in the indictment in this case.

Requested Jury Instruction No.
Of Defendant Sam Ormont

You are instructed that if you find from the evidence in this case that prior to the return of the indictment herein on January 22, 1947, the defendants believed that any income received by them from a partnership or joint venture commencing with the first day of May, 1944, was not payable until March, 1946, and if you further find that the additional income tax which the government claims was defeated and evaded for the year 1944 was the income from such copartnership or joint venture, then and in those events it is your duty to acquit the defendants, even though you may believe that said defendants were mistaken as to when and in what year such tax was payable.

Requested Jury Instruction No.
Of Defendant Sam Ormont

You are instructed that the defendants in this case are presumed to be innocent, and it is your duty to weigh and consider the evidence in the light of said presumption. You are instructed that the burden is upon the government in this case to prove beyond all reasonable doubt not only that the defendants or defendant made and filed a false and fraudulent return at the times set forth in the indictment, but must further prove that such defendant or defendants at the time of so filing such return did so wilfully and knowingly and with intent to defeat and evade a substantial portion of his or their income tax due the government for such year.

Requested Jury Instruction No.
Of Defendant Sam Ormont

At times throughout the trial the court has been called upon to pass on the question whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witness. As to any offer of evidence that has been rejected by the court, you, of course, must not consider the same; as to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

Requested Jury Instruction No.
Of Defendant Sam Ormont

You shall not consider as evidence any statement of counsel made during the trial, unless such statement was made as an admission or stipulation conceding the existence of a fact or facts.

You must not consider, for any purpose, any offer of evidence that was rejected, or any evidence that was stricken out by the court; such matter should be treated as though you had never known it.

Requested Jury Instruction No.
Of Defendant Sam Ormont

In judging the credibility of witnesses, you shall have in mind the law that a witness is presumed to be speaking the truth. This presumption, however, may be overcome by contradictory evidence, by the manner in which the witness testifies, by the character of his testimony, or by evidence that shows, or pertains to, the character of the witness for truth, honesty or integrity, or that pertains to his motives.

Requested Jury Instruction No.
Of Defendant Sam Ormont

The rules of evidence ordinarily do not permit the opinion of a witness to be represented as evidence. An exception to this rule exists in the case of expert witnesses. A person who, by education, study and experience, has become an expert in any art, science or profession, and who is called as a witness, may give his opinion as to any such matter in which he is versed and which is material to the case. You should consider such expert opinion, and should weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it if, in your judgment, the reasons given for it are unsound.

Requested Jury Instruction No.
Of Defendant Sam Ormont

You are instructed that the failure of a defendant to testify should not create any prejudicial or un-

favorable inference in your minds, as the defendant is not required to prove his innocence, and no inference can be drawn against such defendant for his failure to testify.

People v. Russo, 85 Cal. App. 672;
8 Cal. Jur. 358 Sec. 395.

Requested Jury Instruction No. X-8
Of Defendant Sam Ormont

It is not the purpose of the law to penalize frank difference of opinion or innocent errors made despite the exercise of reasonable care. Such errors are corrected by the assessment of the delinquency of tax and its collection with interest for the delay. If any part of the deficiency is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, (five per cent of such deficiency is added thereto; and if any part of any deficiency is due to fraud with intent to evade tax, the addition is fifty per cent thereof.

Spies v. U. S., 317 U. S. 492 to 496-7.

Requested Jury Instruction No.
Of Defendant Sam Ormont

You are instructed that any evidence that was admitted as to only one defendant may not be used by you in considering the evidence against a co-defendant.

[Endorsed]: Filed May 23, 1947.

[Title of District Court and Cause.]

INSTRUCTIONS REQUESTED BY
DEFENDANT PHILLIP HIMMELFARB

Comes now the defendant Phillip Himmelfarb and requests the Court to give to the jury for its consideration the following instructions and each of them:

7/13/47

Refused or covered.

/s/ PEIRSON M. HALL,
Judge.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 17

You are instructed that it is neither criminal nor unlawful for a person to do, or to agree to do, that which the law does not prohibit but recognizes may be lawfully done. So if you believe from the evidence in this case, or if you entertain a reasonable doubt, that whatever act or acts was or were done by the defendants was or were done, not with any criminal intent or not for the purpose of doing or performing any unlawful act, but, on the other hand, was or were done honestly and with an honest intent and purpose and in the belief that such act or acts was or were proper and lawful, then I instruct you that no crime has been committed, and it will be your duty to find the defendant Phillip Himmelfarb not guilty.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 22

You are instructed that if you find from the evidence that defendant Phillip Himmelfarb did prepare and file, or caused to be prepared and filed with the Collector of Internal Revenue the income tax return referred to in Count II of the indictment, and you are unable to determine from the evidence whether such return was or was not false or fraudulent, or if you have a reasonable doubt as to whether such return was or was not false or fraudulent, you must find the defendant Phillip Himmelfarb not guilty.

Section 145 (b), Internal Revenue Code, 26
U. S. C. 145 (b);
Malone v. U. S., 304 U. S. 562, 94 F. (2d) 281;
Hargrove v. U. S., 67 F. (2d) 820;
Spies v. U. S., 31 U. S. 492.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 23

You are instructed that if you find from the evidence that the defendant Phillip Himmelfarb did prepare and file, or cause to be prepared and filed with the Collector of Internal Revenue the income tax return referred to in Count II of the indictment, but that such return was not false and fraudulent, you must find the defendant Phillip Himmelfarb not guilty.

Section 145 (b), Internal Revenue Code, 26
U. S. C. 145 (b);
Malone v. U. S., 304 U. S. 562, 94 F. (2d) 281;
Hargrove v. U. S., 67 F. (2d) 820;
Spies v. U. S., 317 U. S. 492.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 27

You are instructed that in a prosecution for wilfully attempting to evade income taxes the Government must prove not only that the defendants attempted wilfully to defraud it, but must establish that a tax in addition to what the defendants had already paid remains owing. Therefore, if you find from the evidence that the defendant Phillip Himmelfarb paid all of the income tax due and owing by him for such calendar year 1944, or paid an amount in excess of the income tax due and owing by him for such calendar year 1944, you must find him not guilty of Count II of the indictment, irrespective of whether he did or did not wilfully attempt to invade income taxes for such year.

U. S. v. Schenck, 126 F. (2d) 702;
Gleckman v. U. S., 80 F. (2d) 394, 297 U. S.
709;
Rose v. U. S., 128 F. (2d) 622, 317 U. S. 651.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 1

It is your duty to try this case fairly and impartially between the government and the defendants, upon the evidence before you, and upon that alone. You must not permit any prejudice to enter into your deliberation as to the guilt or innocence of the defendants. The nature of the charge should not be permitted by you to influence your judgment one way or the other as to whether or not the defend-

ants are guilty as charged. Our law presumes every person charged with crime innocent until proven guilty, and no person can be found guilty of any offense unless his guilt is first established to a moral certainty and an abiding conviction and beyond all reasonable doubt.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 2

The mere fact that an indictment has been filed charging the defendants with a crime does not itself raise any presumption or inference as to the guilt of the defendants. The mere fact that they have been brought into court by the ordinary criminal process and are here on trial, should not be considered by you as any evidence whatsoever of their guilt.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 3

You are instructed that the defendants in this case are entitled to the individual opinion of each member of this jury and that no member of this jury should vote for a conviction of either of the defendants because of the opinion of the other members of the jury so long as he has a reasonable doubt as to the guilt of such defendant.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 4

The Court instructs you that all the presumptions of law independent of evidence, are in favor of innocence, and every person accused of crime is pre-

sumed to be innocent until his guilt is established to a moral certainty and beyond all reasonable doubt. This presumption attaches at every stage of the case and to every fact essential to a conviction.

By the term "reasonable doubt" is not mean every possible doubt or conjecture that may suggest itself to your minds. A reasonable doubt is not a mere guess or surmise, because everything relating to human affairs and dependent on moral evidence is subject to some possible or imaginary doubt. A reasonable doubt is that stage of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in such condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

You are instructed that the defendants at the outset of the trial are presumed to be innocent. They are not required to prove themselves innocent or to put in any evidence at all upon that subject. In considering the testimony in the case, you must look at that testimony and view it in the light of the presumption with which the law clothes them—that they are innocent, such presumption is to be considered through this trial, unless the evidence convinces you to the contrary beyond all reasonable doubt.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 5

You are instructed that the presumption of innocence is not a mere matter of form, to be disregarded by you at your pleasure, but is an essential, substan-

tial part of the law of the land, and binding upon you in this case, and it is your duty to give the defendants the full benefit of this presumption and to acquit him, unless the evidence in the case convinces you beyond all reasonable doubt of the guilt of such defendant.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 6

The jury is instructed that each essential independent fact necessary to complete a chain or series of independent facts tending to establish a presumption of guilt, should be established to the same degree of certainty as the main fact which these independent circumstances taken together tend to establish, that is, each essential independent fact in the chain or series of facts relied upon to establish the main fact, must be established to a moral certainty and beyond a reasonable doubt and to the entire satisfaction of the jury. The circumstances must all concur to show that the defendant committed the crime charged and must all be inconsistent with any other rational conclusion and must exclude to a moral certainty and to the entire satisfaction of the jury any other hypothesis but the single one of guilt.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 7.

It is a recognized principle of our system of law that in order to convict a defendant, the facts proven must not only be consistent with the theory of guilt, but inconsistent with any reasonable theory of innocence, and this I charge is the law.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 8

It is not your duty to look for some theory upon which to convict the defendants, but, on the contrary, it is your duty and the law requires you to, if you can reasonably do so, reconcile any and all circumstances that have been shown with the innocence of the defendants, and so acquit them.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 9

You are instructed that where two or more equally reasonable inferences may be drawn from a fact shown, that inference leading to a conclusion of innocence should be accepted, rather than one leading to a conclusion of guilt.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 10

You are instructed that if one set or chain of circumstances leads to two opposing conclusions, one pointing to the guilt, the other to the innocence of the defendants, and the jury has any reasonable doubt as to which of such conclusions the chain of circumstances leads, a reasonable doubt is thereby created, and the defendants should be acquitted.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 11

It is the duty of the jury to enter upon the consideration of each circumstance proven, having in

their minds the presumption that defendants are innocent, and in considering each fact or circumstance they should apply it to a presumption of innocence, and if such fact or circumstance, when considered with all the evidence in the case, can be explained consistently with innocence, it is their duty to so explain it.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 12

A witness may be impeached by the party against whom he was called by contradictory evidence, or by evidence that he has made at other times, statements inconsistent with those to which he testified. If you believe that any witness has been successfully so impeached you are at liberty to consider such impeachment in determining the credibility of such witness.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 13

If you believe from the evidence in this case that any witness in the case was influenced or induced to become such a witness and to testify in this case by any hope held out that he would not be prosecuted for any reason for offenses committed, then the jury should take such facts into consideration in determining the weight and credit which should be given to the testimony of a witness thus obtained.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 14

You cannot base a verdict of guilt upon extra judicial oral admissions, or statements of a defendant

alone, unless there is other evidence independent of such extra-judicial oral admissions or statements which establishes the body of the crime with which defendant is charged, or what is known as the corpus delicti, and if you do not believe after a consideration of all the evidence that the body of the crime or corpus delicti is established by evidence other than such extra-judicial oral admissions or statements, then and in that event, you cannot consider such extra-judicial admissions or statements for any purpose.

**Defendant Phillip Himmelfarb's
Proposed Instruction No. 16**

If you find from the evidence in this case that defendant Phillip Himmelfarb, prior to the filing of the indictment, bore a good general reputation in the community in which he lived, for truth, honesty and fair dealing, such good general reputation is of itself sufficient to create a reasonable doubt as to his guilt. And if you entertain a reasonable doubt as to the guilt or innocence of the defendant Phillip Himmelfarb because of his good general reputation, or because of any other reason or fact, it is your duty to find him not guilty.

**Defendant Phillip Himmelfarb's
Proposed Instruction No. 18**

You are instructed that the law presumes the acts of all men have been rightfully, properly and honestly performed, and that the acts shown by the evidence to have been performed by the defend-

ants were performed properly and honestly and by reason of honest and proper motives, unless the contrary is established to your satisfaction beyond a reasonable doubt.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 19

You are instructed that the argument of the United States Attorney is not evidence, and is not entitled to any additional weight or respect by reason of the fact that such argument is made by such governmental official.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 20

In order to convict the defendant Phillip Himmelfarb upon the evidence of circumstances, it is necessary not only that all the circumstances concur to show beyond a reasonable doubt that a crime was committed as alleged in the indictment, but that the defendant Phillip Himmelfarb was the one who committed such crime and that the circumstances are inconsistent with any other rational conclusion. It is not sufficient that the circumstances prove, coincide with, account for, and therefore render probable the theory sought to be established by the prosecution, but they must exclude to a moral certainty every other theory but the single one of guilt, or the jury must find the defendant Phillip Himmelfarb not guilty.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 21

If, after a consideration of the whole case, any juror shall entertain a reasonable doubt of the guilt of the defendant Phillip Himmelfarb, it is the duty of such juror so entertaining such reasonable doubt to vote for a verdict of "not guilty".

The defendant Phillip Himmelfarb is presumed to be innocent until proven guilty; that presumption accompanies him throughout the trial; it goes with you to your retirement to consider your verdict and operates until you have arrived at a verdict. This presumption will avail to acquit the defendant Phillip Himmelfarb unless it be overcome by sufficient proof of his guilt to convince you, and each of you, to a moral certainty and beyond all reasonable doubt of his guilt. You must examine the evidence in the light of presumption of innocence, and unless you find the evidence sufficiently strong to overcome this presumption, and, further, to satisfy you beyond all reasonable doubt of the guilt of the defendant Philip Himmelfarb, he is entitled to a verdict of acquittal at your hands.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 24

You are instructed that if you find from the evidence that the defendant Philip Himmelfarb did prepare and file, or cause to be prepared and filed with the Collector of Internal Revenue the

income tax return referred to in Count II of the indictment, but find that in the preparation and filing thereof, defendant Philip Himmelfarb did so in an honest belief that such return was true and correct, you must find the defendant Phillip Himmelfarb not guilty.

Section 145 (b), Internal Revenue Code, 26 U.S.C. 145 (b);

U.S. v. Schenk, 126 F. (2d) 702, 316 U.S. 705;

Nicola v. U.S., 72 F. (2d) 780;

U.S. v. LaFontaine, 54 F. (2d) 371.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 25

You are instructed that if you find from the evidence that defendant Phillip Himmelfarb did prepare and file, or cause to be prepared and filed with the Collector of Internal Revenue the income tax return referred to in Count II of the indictment, and that in the preparation and filing thereof defendant Phillip Himmelfarb was acting under a mistake of fact respecting, or was in ignorance of, the truth or falsity of the matter set forth in such return, you must find the defendant Phillip Himmelfarb not guilty.

Section 145 (b), Internal Revenue Code, 26 U.S.C. 145 (b);

Hargrove v. U.S., 67 F. (2d) 820;

U.S. v. Schenck, 126 F. (2d) 702, 316 U.S. 705.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 28

You are instructed that if you find from the evidence that defendant Phillip Himmelfarb paid all of the income tax due and owing by him for the calendar year 1944, or paid an amount in excess of the income tax due and owing by him for the calendar year 1944, you must find the defendant Phillip Himmelfarb not guilty of Count II of the indictment.

Section 145 (b), Internal Revenue Code, 26 U.S.C. 145 (b);

Gleckman v. U. S., 80 F. (d) 394, 297 U.S. 709;

U. S. v. Schenck, 126 F. (2d) 702, 316 U.S. 705;

Rose v. U.S., 128 F. (2d) 622, 317 U.S. 651.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 29

You are instructed that if you find from the evidence that the defendant Phillip Himmelfarb did prepare and file, or cause to be prepared and filed the income tax return referred to in Count II of the indictment, and that such return did not set forth the true and correct net income and the amount of tax due and owing thereon, as a result of mere negligence or carelessness of defendant Phillip Himmelfarb in making such return, you must find the defendant Phillip Himmelfarb not guilty.

U.S. v. Schenck, 126 F. (2d) 702.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 30

You are instructed that if you find from the evidence that defendant Phillip Himmelfarb did prepare and file, or cause to be prepared and filed with the Collector of Internal Revenue the income tax return referred to in Count II of the indictment, but are unable to determine from the evidence whether or not defendant Phillip Himmelfarb did so in the honest belief that such return was true and correct, or if said defendant was acting under a mistake of fact respecting, or in ignorance of, the truth or falsity thereof, you must find the defendant Phillip Himmelfarb not guilty.

Section 145 (b), Internal Revenue Code, 26
U.S.C. 145 (b);
Hargrove v. U.S., 67 F. (2d) 820;
U.S. v. Schenck, 126 F. (2d) 702.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 33

You are instructed that if you find from the evidence that the defendants were joint venturers or co-partners and for any reason whatsoever could not lawfully elect to report the income from such joint venture or partnership upon a fiscal year basis, and that the defendants elected and reported the income from such joint venture on a fiscal year basis as the result of ignorance or a mistake or misunderstanding of the law respecting the use of a fiscal year basis, you must find the defendants not guilty.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 34

If you find from the evidence that the defendants were joint venturers or co-partners and derived an income from such joint venture or co-partnership, and that as such co-partners or joint venturers they elected to use a fiscal year commencing on the 1st day of May, 1944, and ending on the last day of April, 1945, you are instructed that then and in that event said defendants were not required, under the law, to account for or pay any income tax on such income until on or before the 15th day of March, 1946, and therefore as to any such income the defendant Phillip Himmelfarb would not be guilty of the crime charged against him in the indictment in this case, and you must acquit him.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 35

You are instructed that if you find from the evidence that the defendant Phillip Himmelfarb believed that any income received by him from a partnership or joint venture was accountable and the tax thereon was payable by him as income for the year 1945, then and in that event it is your duty to find the defendant Phillip Himmelfarb not guilty even though you may believe that he was mistaken as to when or in what year such income was accountable and payable.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 36 (44)

A taxpayer who reports and pays income tax in a given year or years under a belief that such year or years is the year or years when such tax is due, has not committed an offense under the Internal Revenue Law even though the taxpayer was wrong in such belief, for the reason that under such circumstances there was no "willful" violation of the law, and a violation of the provisions of the Internal Revenue Code charged in this case must be willful in order to constitute a crime.

Therefore, if you find from the evidence that the defendant Phillip Himmelfarb reported and paid a tax owed by him in a year other than the year in which such tax was due under a belief that the tax so reported and paid by him was due in the year for which he reported and paid same, you must find the defendant Phillip Himmelfarb not guilty.

Hargrove v. U.S., 67 F. (2d) 820;
Murray v. U.S., 117 F. (2d) 40.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 38

You are instructed that the defendants are not charged with concealing or attempting to conceal the gross or net incomes received by them, or the sources thereof, but with willfully attempting to defeat and evade income tax. Therefore, if you find from the evidence that defendant Phillip Him-

melfarb did not attempt to evade the income tax due or owing by him, you must find him not guilty, irrespective or whether he did or did not conceal or attempt to conceal the true and correct gross or net incomes received by him.

Section 145 (b), Internal Revenue Code,
26 U.S.C., 145 (b);
Spies v. U.S., 317 U.S. 492.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 39

You are instructed that one of the essential elements of the proof of evasion of income tax is a willful intent; that is, actual knowledge of the existence of the obligation and a specific wrongful intent to evade payment thereof. If you find from the evidence that the defendant Phillip Himmelfarb did not have actual knowledge of the existence of an obligation to pay any income tax in addition to the income tax paid by him, if such obligation actually existed, or that the defendant Phillip Himmelfarb did not have a specific wrongful intent to evade such obligation, you must find him not guilty.

Hargrove v. U.S., 67 F. (2d) 820;
Malone v. U.S., 94 F. (2d) 281, 304 U.S. 562;
Spies v. U.S., 317 U.S. 492.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 40

You are instructed that there is nothing morally or legally wrong in desiring to avoid but not evade taxes and to take proper and legal steps to do this, and a taxpayer is acting within his legal rights

and is not guilty of violating the law by operating through different corporations or partnerships rather than individually and personally, or by shifting a real transaction from an individual and personal transaction to a corporation or partnership in order to lower his tax rate. If you find from the evidence in this case that the defendant Phillip Himmelfarb apportioned business transactions between himself and any partnership or joint venture of which he was a member, which apportionment was due to a desire to keep down his taxes, such apportionment was lawful and he should be acquitted.

Nicola v. U.S., 72 F. (2d) 780.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 41

You are instructed that in order to convict the defendants for willfully attempting to evade income taxes, the prosecution must prove beyond a reasonable doubt that income tax was due from the defendants for the years alleged in the indictment over and above the amounts shown in the returns filed for such years, and that the defendants with evil motive, consciously, deliberately and intentionally attempted to evade such taxes. If you find from the evidence that no income tax was due from defendant Phillip Himmelfarb for the year 1944 over and above the amount shown in his return, or if there is a reasonable doubt in your mind with respect thereto, or if you find that there was due from defendant Phillip Himmelfarb for the year 1944 income tax over and above the amount shown

in the return but that the defendant did not with evil motive, consciously, deliberately and intentionally attempt to evade such taxes, or if there is a reasonable doubt in your mind with respect thereto, you must find the defendant Phillip Himmelfarb not guilty.

Gleckman v. U.S., 80 F. (2d) 394, 297 U.S. 709;

Hargrove v. U.S., 67 F. (2d) 820.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 42 (45)

The failure to account and pay income tax in the year for which such tax should be accounted and paid, and the paying and accounting for such tax in a different year by the taxpayer under an honest belief by him that such year is when the tax is due, does not constitute a violation of the Internal Revenue Code.

Hargrove v. U.S., 67 F. (2d) 820;
Spies v. U.S., 317 U.S. 492.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 47

During the trial of this case certain evidence was received against defendant Sam Ormont only. Such evidence may be considered by you only when considering the case of defendant Sam Ormont and must not be considered in connection with the case of defendant Phillip Himmelfarb for any purpose whatsoever.

California Jury Instructions—Criminal, No.
39 Adapted.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 48

You are directed to find the defendant Phillip Himmelfarb not guilty.

Defendant Phillip Himmelfarb's
Proposed Instruction No. 49

You are directed to acquit the defendant Phillip Himmelfarb.

[Endorsed]: Filed June 3, 1947.

At a stated term, to wit: The February Term, A. D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 13th day of June in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

MINUTE ORDER JUNE 13, 1947

This cause coming on for further jury trial of defendants Sam Ormont and Phillip Himmelfarb; Wm. Strong, Assistant U. S. Attorney, appearing as counsel for the Government; Daly B. Robnett and Benj. F. Kosdon, Esqs., appearing as

counsel for Defendant Ormont; Wm. Katz, Esq., appearing for Defendant Himmelfarb; both of the said defendants being present on bond:

Attorney Robnett argues in behalf of Defendant Ormont. Attorney Strong makes closing argument in behalf of the Government.

At 11:59 a.m. the Court instructs the jury. At 12:49 p.m. Bailiffs Brand and Strong are sworn to take charge of the jury and the jury thereupon retires to the jury room in the custody of the said bailiffs to deliberate upon a verdict.

The Court orders that the jury be taken to lunch and thereafter return to the jury room to consider its verdict.

At 12:50 p.m. court recesses until the return of the jury with a verdict.

At 3:25 p.m. the jury returns into court and the foreman of the jury presents verdicts which are read in open court, and it is ordered that the verdicts be filed and spread upon the minutes, the said verdicts as filed being as follows: [177]

* * * * *

The jury is discharged and excused until further notice. Attorney Katz moves for a continuance of the matter of sentence for the purpose of presentation of motions for new trial, etc., on behalf of Defendant Himmelfarb and Attorney Robnett joins in the motion on behalf of Defendant Ormont.

The Court continues hearing of oral motions of Attorneys Katz and Robnett until 10 a.m., June 16, 1947, and also of the matter of sentence and all further proceedings until that time.

On motions of Attorneys Katz and Robnett, it is ordered that Defendants Ormont and Himmelfarb be released on their own recognizance and that the said defendants return into court June 16, 1947, at 10 a.m. [178]

In the District Court of the United States, Southern District of California, Central Division.

No. 19138—Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAM ORMONT and PHILLIP HIMMELFARB,
Defendants.

VERDICT

We, the Jury in the above-entitled cause, find the defendant, Sam Ormont, guilty as charged in Count One of the indictment; and

We, the Jury in the above-entitled cause, find the defendant, Phillip Himmelfarb, guilty as charged in Count Two of the indictment.

/s/ GUY F. CAMPBELL,
Foreman of the Jury.

Dated: Los Angeles, California, June 13, 1947.

[Endorsed]: Filed June 13, 1947. [179]

[Title of District Court and Cause.]

MOTION FOR ACQUITTAL AND MOTION FOR NEW TRIAL

The defendant Phillip Himmelfarb moves the Court for judgment of acquittal on Count II of the indictment notwithstanding the verdict of the jury, and in the alternative, moves the Court to grant him a new trial as to Count II of the indictment, for the following reasons:

1. The Court erred in denying defendant's motion for acquittal made at the conclusion of the evidence on the part of the prosecution;
2. The Court erred in denying defendant's motion for acquittal made at the conclusion of all the evidence;
3. The verdict is contrary to the weight of the evidence;
4. The verdict is not supported by substantial evidence;
5. The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances: The attorney for the Government repeatedly referred to other alleged crimes and offenses respecting which there was no evidence before [180] this Court against this moving defendant, all of which said matters as well as other matters referred to by the attorney for the Government were dehors the record; and the attorney for the Government stated in his argument that a witness not called was as accessible to defendant

as to the Government, and repeatedly demanded why such witness, as well as another witness who was called by the Government but did not testify as to some matters, were not called by defendant to testify for and on behalf of defendant, the attorney for the Government then knowing full well that defendant was not required to prove his innocence, but that it was the burden of the Government to prove his guilt beyond a reasonable doubt;

6. The Court erred in charging the jury and in refusing to charge the jury as requested.

Dated, at Los Angeles, California, this 16th day of June, 1947.

/s/ WILLIAM KATZ,
Attorney for Defendant,
Phillip Himmelfarb.

[Endorsed]: Filed, June 16, 1947. [181]

At a stated term, to wit: The February Term, A. D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 16th day of June in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

MINUTE ORDER JUNE 16, 1947

This cause coming on for hearing on motion of the defendants for acquittal or for a new trial, pursuant to oral notice thereof given in open court on June 13, 1947, and for sentence; Wm. Strong, Assistant U. S. Attorney, appearing as counsel for the Government; Daly B. Robnett and Benj. F. Kosdon, Esqs., appearing as counsel for Defendant Ormont; Wm. Katz, Esq., appearing as counsel for Defendant Himmelfarb; both of the said defendants being present on their own recognizance:

Attorney Katz argues in support of a motion for an acquittal and for a new trial, citing argument of counsel for the Government before the jury as prejudicial, and it is ordered that the said motions as to Defendant Himmelfarb are denied.

Attorney Robnett orally moves for a judgment non-abstante verdicto and for a new trial on the grounds that the Court failed to strike the testimony of Witness Eustice, particularly as to the years 1942 and 1943, having acquitted Defendant Ormont on counts 3 and 4 of the indictment, and it is ordered that the said motions are denied.

The Court pronounces sentence upon each of the said defendants as follows: [182]

* * * * *

District Court of the United States, Southern District of California, Central Division.

No. 19138

Criminal Indictment in four counts for violation
of U. S. C., Title 26
Sec. 145(b)—Internal Revenue Code

UNITED STATES

vs.

PHILLIP HIMMELFARB.

JUDGMENT AND COMMITMENT

On this 16th day of June, 1947, came the United States Attorney, and the defendant, Phillip Himmelfarb, appearing in proper person, and by counsel, William Katz, Esq., and,

The defendant having been convicted on a verdict of guilty of the offense charged, in the indictment in the above-entitled cause, to wit: willfully, knowingly, unlawfully and feloniously attempt to defeat and evade a large part of the income tax due and owing to the United States of America for the calendar year 1944 by preparing and filing with the Collector of Internal Revenue a false and fraudulent income tax return as set forth in count two of the indictment and on which the defendant was found guilty, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of one (1) year and one (1) day on count two in an institution of the penitentiary type to be selected by the Attorney General.

It is further ordered that the defendant be granted a stay of execution of commitment until 12 noon, July 16, 1947, and released on bond during said stay, the bond being fixed in the sum of \$10,000.00, and that same be posted by 5 p. m., June 16, 1947;

It is further ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,
United States District Judge.

Filed this 16th day of June, 1947.

EDMUND L. SMITH,
Clerk.

(By) /s/ J. M. HORN,
Deputy Clerk.

[183]

District Court of the United States, Southern District of California, Central Division.

No. 19138

Criminal Indictment in four counts for violation
of U. S. C., Title 26

Sec. 145(b)—Internal Revenue Code

UNITED STATES

vs.

SAM ORMONT

JUDGMENT AND COMMITMENT

On this 16th day of June, 1947, came the United States Attorney, and the defendant Sam Ormont appearing in proper person, and by counsel, Daly B. Robnett and Benjamin F. Kosdon, Esqs., and,

The defendant having been convicted on a verdict of guilty of the offense charged in the indictment in the above-entitled cause, to wit; willfully, knowingly, unlawfully and feloniously attempt to defeat and evade a large part of the income tax due and owing to the United States of America for the calendar year 1944 by preparing and filing with the Collector of Internal Revenue for the Sixth Internal Revenue Collection District of California a false and fraudulent income and victory tax return, and by concealing and attempting to conceal from the said Collector the true and correct incomes received by the defendant herein as set forth in count one, and the defendant having been now asked whether he has anything to say why judgment should not

be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

Ordered and adjudged that the defendant, having been found guilty of said offense, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of one year (1) and one (1) day on count one in an institution of the penitentiary type to be selected by the Attorney General.

It is further ordered that the defendant be granted a stay of execution of commitment until 12, noon, July 16, 1947, and released on bond during said stay, the bond being hereby fixed in the sum of \$10,000.00, and that same be posted by 5 p. m., June 16, 1947.

It is further ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,
United States District Judge.

Filed this 16th day of June, 1947.

EDMUND L. SMITH,
Clerk.

(By) /s/ J. M. HORN,
Deputy Clerk.

[184]

In the District Court of the United States in and for the Southern District of California, Central Division.

No. 19094

(18 U. S. C. 88;) (50 U. S. C. App. 901 et seq.)
Conspiracy; Emergency Price Control Act of
1942.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAM ORMONT and PHILLIP HIMMELFARB,
d/b/a/ ACME MEAT COMPANY,

Defendants.

APPLICATION AND MOTION FOR IMMUNITY AND FOR ORDER BARRING FURTHER PROBATION OF DEFENDANT SAM ORMONT

To the Honorable District Court of the United States for the Southern District of California, Central Division, to the Honorable Peirson M. Hall, Judge thereof, to the plaintiff in the above-entitled action, to James M. Carter, United States Attorney, Howard B. Calverly, Chief, Criminal Division, Assistant United States Attorney, and William Strong, Assistant United States Attorney, Attorneys for plaintiff:

You and each of you will please take notice that on Monday, the 19th day of May, 1947, at the hour

of 10:00 o'clock a.m., or as soon thereafter as counsel can be heard, the defendant Sam Ormont in the above-entitled case, by and through his attorneys, Benjamin F. Kosdon and Daly B. Robnett, will move the said Honorable Court, the [185] Honorable Judge Peirson M. Hall presiding, for an Order of said Court granting the said defendant Sam Ormont immunity from prosecution under the indictment in the above-entitled case, and for an Order barring all further prosecution of said defendant thereunder.

As grounds for said motion, upon which the same will be made, said defendant alleges:

I.

That on or about the of February, 1946, the duly constituted Grand Jury of said court for the Southern District of California, Central Division, was engaged in the investigation of the matter of whether or not said defendant and others, particularly The Southern California Meat Company and others connected therewith, had been guilty of violations of the Emergency Price Control Act of 1942 and amendments thereto and of regulations thereunder; that at said time and place the plaintiff in this action caused a subpoena to be duly issued and directed to this defendant and served upon him, requiring his attendance before the said Grand Jury as a witness and to give testimony in connection with said investigation; and that, pursuant to said subpoena and not otherwise, said defendant did appear before said Grand Jury and was, without

his consent, duly sworn as a witness and interrogated on the said subject and matters so then under investigation, and was compelled to answer questions concerning the same. That before being so sworn and required to testify, this said defendant was not advised by anyone of his constitutional rights to refuse to answer in the event any of said answers might incriminate him, and was not advised that said evidence sought to be elicited from him would be used against him, and was not advised that he was under investigation, and this defendant did not know of his said constitutional rights, did not know that he had a right to so refuse to answer any such questions propounded to him that might in any way incriminate him, and had not sought or obtained advice from any attorney on any of said subjects, but on the contrary and by reason of said acts of [186] plaintiff in so issuing said subpoena and serving it upon him and thereby compelling him to attend at said hearing, said defendant believed that he had no right to refuse to testify or to answer any questions propounded to him by said inquisitorial body, and therefore this said defendant did answer questions pertinent to and in connection with the said inquiry before said Grand Jury.

II.

That thereafter the said Grand Jury, being, as this defendant is informed and believes, the same Grand Jury before whom said defendant had so been compelled to appear, voted and returned to

this honorable Court the indictment in this action Number 19094, charging this defendant with violations of the said Emergency Price Control Act of 1942 and of the Revised Maximum Price regulations in said indictment numbered and set forth. That by reason of said facts hereinbefore alleged, this defendant was compelled to be a witness against himself, contrary to the Constitution and Statutes of the United States; and this defendant is informed and believes and is advised by his counsel that in their opinion this defendant is entitled to immunity from any prosecution in this action or in any action growing out of the said investigation in which he was so compelled to testify.

III.

This defendant further alleges that on the 21st day of January, 1946, the Acting District Director of the Office of Price Administration of the United States of America, at Los Angeles, California, duly issued a subpoena directed to this defendant in the following words and figures:

“United States of America, Office of Price Administration. Subpoena Duces Tecum. Sam Armont d.b.a. Acme Meat Co., Workman Station, Southgate, California. At the instance of the Price Administrator, Office of Price Administration, you are hereby required to appear before Delbert F. Wells of the Office of Price Administration, at Room [187] 330 Western Pacific Bldg., 1031 South Broadway, Los Angeles, California, on the 22nd

day of January, 1946, at 9 o'clock a.m. of that day, to testify concerning Sam Ormont d.b.a. Acme Meat Co. and also Phil's Meat Co. And you are hereby required to bring with you and produce at said time and place the following documents: General Ledger, Journals, Invoices of Sales, U. S. Subsidy, Applications and all Subsidy Reports, Sales Registers, Cash Received Register, Bank Records and all other records of meat operations to include: Kill Records, Yield Records and Sales. All of the above for the years 1943, 1944 and 1945. Fail not at your peril. In witness whereof, the undersigned District Director of the Office of Price Administration, has hereunto set his hand at Los Angeles, Calif., this 21st day of January, 1946. (Signed) John O'Connor, Acting District Director." That, pursuant thereto, the said defendant was compelled to and did furnish to the said director and his duly constituted deputies or agents all of the said documents described and requested in the said subpoena, and was thereby compelled to furnish evidence against himself upon which the indictment in this case has been rendered. That prior to so furnishing said evidence, this defendant was not advised of his constitutional rights to refuse to give evidence that would incriminate him and was not advised that such evidence would be used against him in any criminal prosecution, and did not know of his constitutional rights or of his rights, if any, to immunity from such prosecution, and had he known of the same, said defendant would have refused to furnish any such information or data.

Said motion will be made and based upon this verified Notice and the facts stated herein, and upon all the papers, records, minutes and files in said action.

Wherefore, this defendant prays for an Order of this honorable Court granting him immunity from further prosecution in this case and as to each and every count of the indictment on file herein, and for a further Order barring the plaintiff in said action from further [188] proceeding with said case as against this defendant.

Dated this 15th day of May, 1947.

BENJAMIN F. KOSDON and
DALY B. ROBNETT,
By /s/ BENJAMIN F. KOSDON,
Attorneys for Defendants.

State of California,
County of Los Angeles—ss.

Sam Ormont, being first duly sworn, deposes and says: That he is the defendant named in the foregoing Application and Motion for Immunity and for Order Barring Further Prosecution of Defendant Sam Ormont; that he has read the same and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters therein stated upon his information or belief; and as to those matters he believes it to be true.

/s/ SAM ORMONT.

Subscribed and sworn to before me this 15th day of May, 1947.

/s/ BENJAMIN F. KOSDON,
Notary Public in and for the County of Los Angeles,
State of California. [190]

Points and Authorities

1. A witness who is subpoenaed before a Grand Jury or a Court and gives testimony pursuant thereto, does so under compulsion.

U. S. vs. Kallas, 272 Fed. 742, 752;
U. S. vs. Kimball, 117 Fed. 156, 163;
Counselman vs. Hitchcock, 142 U. S. 547;
35 L Ed 1110;
In re Simon, 297 Fed. 942;
People vs. Schwartz, 78 Cal. App. 561, 570;
People vs. O'Bryan, 165 Cal. 55, 62.

2. "Constitutional provision for the security of person and property should be liberally construed. A close literal construction deprives them of half their efficacy and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of the Courts to be watchful for the constitutional rights of a citizen and against all stealthy encroachments thereon. Their motto should be *obsta principiis.*"

The foregoing quotation from Boyd vs. U. S., 116 U. S. 616.

See also People vs. Schwartz, 78 Cal. App. 570, 571.

The following quotation is from the case of U. S. vs. Kallas, 272 Fed. 742, 752: "How can it be said that, if a Court required an accused to answer upon the witness chair, with the alternative of going to jail if he refused, it was such compulsion as to

invalidate the evidence so obtained, and, at the same time, that a prisoner questioned in jail by his captor was not compelled to give evidence against himself?

"Such a course would be to very nearly, if not quite, blind oneself as to what constitutes compulsion. As above pointed out, the compulsion forbidden by the amendment—or at least included in its prohibition—is compulsion exercised through the process of the Court. The commitment by which the petitioner in the present case [191] was held in jail is no less a compelling process than were he in Court and ordered upon the witness chair for examination . . . while it may be that many know of their rights, and, even when in prison, have the will and courage to stand upon them, there certainly are others who do not."

3. A witness subpoenaed and compelled to testify is entitled to immunity from future prosecution, whether he claimed it or not at the time he gave the testimony, or whether or not he refused to answer on the ground of incrimination.

U. S. vs. Monia, 317 U. S. 424; 87 L Ed 376;

U. S. vs. Kallas, 272 Fed. 742, 752,

—above quoted from, and in which it is held that, while many persons may know their rights, many do not.

In the case at bar, the affidavit of the defendant shows that he did not.

4. Immunity from future prosecution exists in behalf of a witness so compelled to testify as to any crime or offense arising out of the acts to which the examination relates, whether or not the particular investigation being conducted at the time was for that specific offense.

Counselman vs. Hitchcock, 142 U. S. 547.

In re Tahbel, 46 Cal. App. 755 @ 759,

in which the Court said: "To bring a person within the immunity of this provision (provision of the constitution) it is not necessary that the examination of the witness should be had in the course of a criminal prosecution against him, or that a criminal proceeding should have been commenced and he actually pending. It is sufficient if there is a law creating the offense under which the witness may be prosecuted. If there is such a law, and if the witness may be indicted or otherwise prosecuted for a public offense arising out of the acts to which the examination relates, he cannot be [192] compelled to answer in any collateral proceeding, civil or criminal, unless the law has absolutely secured him against any use in a criminal prosecution of the evidence he may give; and this can only be done by a statutory provision that if he submits to the examination and answers the questions he shall be exempt from criminal prosecution for any offense that may be disclosed as a consequence of his examination (Ex parte Clarke, 103 Cal. 352; Counselman vs. Hitchcock, 142 U. S. 547; Karrel vs. Conlan, 155 Wis. 221)."

5. Immunity was granted the defendants in the case of U. S. vs. Armour and Co., 64 Fed. Supp. 855, which was a case under the O. P. A. regulations, and in which case the Court also held that even though the evidence given by the defendants was negative evidence, nevertheless they were immune from prosecution, since the questions might have brought forth an incriminating answer and the subject being investigated was one which would place them in real jeopardy of a prosecution.

In conclusion, we respectfully submit that the defendant Sam Ormont should be held immune from prosecution in this case by reason of the facts in his application set forth.

Respectfully submitted,

BENJAMIN F. KOSDON and
DALY B. ROBNETT,

By /s/ BENJAMIN F. KOSDON,
Attorneys for Defendants.

[Endorsed]: Filed May 16, 1947.

[193]

In the District Court of the United States in and for the Southern District of California, Central Division

INDICTMENT IN CASE NO. 18,366

Viol.: United States Code, Title 18, Section 88
United States Code, Title 50, App. Section 901 et seq. Conspiracy to commit offenses against the United States. Violations of the Emergency Price Control Act of 1942.

In the District Court of the Southern District of California—ss.

The Grand Jurors of the United States of America, being duly impanelled, sworn and charged in the District Court for the Southern District of California, Central Division, in the September, 1945, Term of this Court, having begun but not finished during the said September Term of Court, among other things the matter of the investigations charged in this indictment, and having continued to sit by the order of this Court in and for the said District during the February, 1945 Term to complete inquiries begun, but not finished, at the original term, and inquiring for that District, upon their oaths find and present as follows:

Count 1

1. That at all times material herein, the Southern California Meat Company, Inc., has been and now is a corporation duly organized under the laws of the State of California.

2. That Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou Segal, whose names are to the Grand Jurors otherwise unknown, and who are hereby indicted and named defendants herein, who at times material herein were engaged in the businesses of custom slaughterer, slaughterer, and wholesaler of meat, under the Emergency Price Control Act of 1942 and Maximum Price Regulations Nos. 148, 165, 169 and 239 thereunder under the firm names of Southern California [194] Meat Co., Inc., Southern California Meat Company, No. 2, and Central Packing Company, since on or about July 1, 1943, and continuously thereafter to and including the finding and presenting of this indictment, in the County of Los Angeles, State of California, within the division and district aforesaid, and in other places to the Grand Jurors unknown, did feloniously and unlawfully conspire, combine and confederate together, and with diverse other persons whose names are to the Grand Jurors unknown, to commit offenses against the United States, to wit:

a. That the said defendants would charge and cause others to charge for slaughtering services at prices in excess of the maximum prices permitted under the Emergency Price Control Act of 1942, and applicable regulations promulgated thereunder, including revised Maximum Price Regulation No. 165;

b. That the said defendants would refuse and cause others to refuse to render slaughter-

ing services to any prospective purchasers of such services unless prices were paid therefor which were in excess of the maximum prices permitted under the aforesaid Emergency Price Control Act of 1942, and of the aforesaid Maximum Price Regulation No. 165;

c. That the said defendants would refuse and cause others to refuse to sell meat to any prospective purchasers unless the prices paid therefore were in excess of the maximum prices permitted under the aforesaid Emergency Price Control Act of 1942, and of the aforesaid Maximum Price Regulations Nos. 148, 169 and 239;

d. That the said defendants would sell and cause others to sell meat at prices in excess of the maximum prices permitted under the Emergency Price Control Act of 1942 and applicable regulations promulgated thereunder, including revised Maximum Price Regulations Nos. 148, 169 and 239;

e. That the said defendants would make and cause others to make false, fictitious and fraudulent entries upon the records kept by or for the said defendants in the conduct of their aforesaid business, [195] and/or businesses, in violation of the aforesaid Emergency Price Control Act of 1942 and the aforesaid Maximum Price Regulations Nos. 148, 165, 169 and 239;

f. That the said defendants would make fictitious payments, loans, transfers, collections and receipts of money to and from other per-

sons and firms for the purpose of concealing, and would otherwise conceal, the aforesaid illegal charges, false, fictitious and fraudulent entries, and receipts of prices for the aforesaid services and meat sold in excess of the maximum price permitted under the aforesaid Emergency Price Control Act of 1942 and the aforesaid Maximum Price Regulatons Nos. 148, 165, 169 and 239;

g. That the said defendants would and would cause others to issue various checks, notes, and other evidence of payments, loans, collections, transfers and receipts which did not in truth and in fact represent the true and actual transactions between the parties, but were fictitious and fraudulently made and transferred and entered on the books and records of the aforesaid defendants for the purpose of concealing their other aforementioned illegal activities, in violation of the aforesaid Price Control Act of 1942, and aforesaid Maximum Price Regulations Nos. 148, 165, 169 and 239.

h. That the said defendants would persuade and cause others to persuade diverse persons to make various false and untrue and fraudulent entries upon the records of the said diverse persons for the purpose of concealing the aforesaid illegal activities of the said defendants;

i. That the said defendants would engage in any and all similar and dissimilar schemes, tricks, fasifications and methods of their aforesaid illegal activities as might occur to them

and others from time to time, in violation of the aforesaid Emergency Price Control Act of 1942, and the aforesaid Maximum Price Regulations Nos. 148, 165, 169 and 239;

j. That in carrying out the purposes and objects of this conspiracy, the said defendants would operate under and as various [196] organizations, including Southern California Meat Company, No. 2 and Central Packing Company;

k. That each of the said defendants would share in all gains and profits flowing and accruing from any and all of the above described illegal activities;

3. That in furtherance of and to effectuate the purposes and objects of said conspiracy, the said defendants at the times and places hereinafter set forth, within the jurisdiction of this Court, committed the following overt acts:

(a) On or about June 30, 1944 the defendants prepared Southern California Meat Co., Invoice No. 14942 showing a charge of \$100.00 for "slaughtering";

(b) On or about July 7, 1944; the defendants prepared Southern California Meat Co., Invoice No. 14985 showing a charge of \$422.00 for "slaughtering";

(c) On or about July 13, 1944 the defendants prepared Southern California Meat Co., Invoice No. 15076 showing a charge of \$26.00 for "slaughtering";

- (d) On or about July 14, 1944 the defendants prepared Southern California Meat Co., Invoice No. 15095 showing a charge of \$65.00 for "slaughtering";
- (e) On or about July 21, 1944 the defendants prepared Southern California Meat Co., Invoice No. 15173 showing a charge of \$136.00 for "slaughtering";
- (f) On or about July 28, 1944 the defendants prepared Southern California Meat Co., Invoice No. 15251 showing a charge of \$171.00 for "slaughtering";
- (g) On or about July 28, 1944 the defendants prepared Southern California Meat Co., Invoice No. 15249 showing a charge of \$62.00 for "slaughtering";
- (h) On or about August 1, 1944 the defendants prepared Southern California Meat Co., Invoice No. 15268 showing a charge of \$392.70 for slaughtering"; [197]
- (i) On or about August 8, 1944, the defendants officially began operating under the firm name and style of Southern California Meat Co., No. 2;
- (j) On or about December 29, 1944, the defendants accepted \$144.00 from M. N. Sample;
- (k) On or about January 1, 1945, the defendants officially began operating under the firm name and style of Central Packing Company;
- (l) On or about January 5, 1945, the defendants accepted \$165.00 from H. N. Sample;

- (m) On or about January 5, 1945, the defendants issued Southern California Meat Co., No. 2 Invoice No. 7733;
- (n) On or about January 19, 1945, the defendants accepted \$143.00 from H. N. Sample;
- (o) On or about January 9, 1945, the defendants issued Southern California Meat Co., No. 2, Invoice No. 7887;
- (p) On or about February 7, 1945, the defendants issued Central Packing Co., Invoice No. 165;
- (q) On or about March 30, 1945, the defendants issued Central Packing Co., Invoice No. 1832;
- (r) On or about March 30, 1945, the defendants issued Central Packing Co., Invoice No. 1831; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [198]

Count 2
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 25th day of October, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and

Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Courtesy Market—Meuhlberger, certain meat items, to wit: Grade A beef, Grade A veal, as shown on Invoice No. 6109 of the Southern California Meat Co., No. 2, for a price per pound which was, as the said defendants then and there well know, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulation then was: for Grade A beef, 21 cents a pound; for Grade A veal, $21\frac{3}{4}$ cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [199]

Count 3
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 25th day of October, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree

to sell and did sell to William Meuhlberger certain meat items, to wit: Grade A beef as shown on Invoice No. 6034 of the Southern California Meat Co., No. 2 for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for Grade A beef, 21 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [200]

Count 4

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 21st day of March, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Clover Meat Co., certain meat items, to wit: Grade A beef, Grade A veal and Grade B veal as shown on Invoice No. 1505 of the Central Packing Co., for a price per pound which

was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for Grade A beef, 20 $\frac{3}{4}$ cents a pound; contrary to the form of the statute in such case under and provided and against the peace and dignity of the United States of America. [201]

Count 5

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 21st day of February, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Clover Meat Co., certain meat items, to wit: Grade A beef as shown on Invoice No. 607 of the Central Packing Co., for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under

the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for Grade A beef, 20 $\frac{3}{4}$ cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [202]

Count 6

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 14th day of February, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Clover Meat Co., certain meat items, to wit: Grade A beef, as shown on Invoice No. 389 of the Central Packing Co., for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was:

for Grade A beef, 20 $\frac{3}{4}$ cents per pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [203]

Count 7

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 28th day of November, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Club Market certain meat items, to wit: Grade A beef as shown on Invoice No. 6902 of the Southern California Meat Co., No. 2 for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for Grade A beef, 21 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [204]

Count 8
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 28th day of November, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Club Market certain meat items, to wit: Grade A beef as shown on Invoice No. 6903 of the Southern California Meat Co., No. 2 for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for Grade A beef, 21 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [205]

Count 9
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 29th day of September, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Club Market certain meat items, to wit: Grade A beef as shown on Invoice No. 5427 of the Southern California Meat Co., No. 2 for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for Grade A beef, 21 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [206]

Count 10
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 19th day of February, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Club Market certain meat items, to wit: Grade B beef, as shown on Invoice No. 479 of the Central Packing Company for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: Grade B beef, 19 cents per pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [207]

Count 11

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 19th day of March, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Club Market certain meat items, to wit: Grade A beef as shown on Invoice No. 1368 of the Central Packing Company for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for Grade A beef, 20 $\frac{3}{4}$ cents per pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [208]

Count 12
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 27th day of March, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon Invoice 1666 of the aforesaid Central Packing Company showing a sale of Grade B beef at 18 $\frac{3}{4}$ cents a pound, and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [209]

Count 13

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 26th day of February, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon Invoice 718 of the aforesaid Central Packing Company showing a sale of Grade A beef at 20 $\frac{3}{4}$ cents a pound, and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [210]

Count 14

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 29th day of January, 1945, in the City of Los Angeles, County of Los Angeles,

State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon Invoice 8377 of the aforesaid Central Packing Company showing a sale of Grade A beef at 21 cents a pound and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [211]

Count 15
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 13th day of October, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or

cause to be made an entry false in a material respect upon Invoice 5736 of the aforesaid Southern California Meat Company No. 2 showing a sale of Grade A beef at 21 cents a pound, and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry; and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [212]

Count 16

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 5th day of July, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal doing business as aforesaid, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to H. N. Sample certain slaughtering services, to wit, slaughtering of 13 head of beef, as shown on Invoice No. 14967 of the Southern Califor-

nia Meat Co., Inc., for a price per head which was, as the said defendants then and there well knew, in excess of the maximum price for said slaughtering permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 165, thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per head under the aforesaid Act and regulation then was: One dollar (\$1.00); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [213]

Count 17
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 15th day of August, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to H. N. Sample certain slaughtering services, to wit, slaughtering of 39 head of beef, as shown on Invoice No. 15456 of the Southern California Meat Co., Inc., for a price per head which was, as the said defendants then and there well knew, in excess of the maximum price for said slaughtering

permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 165, thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per head under the aforesaid Act and regulation then was: One dollar (\$1.00); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [214]

Count 18

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 5th day of July, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Model Meat Co., certain slaughtering services, to wit, slaughtering of 28 head of beef, as shown on Invoice No. 14965 of the Southern California Meat Co., Inc., for a price per head which was, as the said defendants then and there well knew in excess of the maximum price for said slaughtering permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 165, thereunder, which had been duly promulgated pursuant to the

provisions of said Act, which maximum price per head under the aforesaid Act and regulation then was: One dollar (\$1.00); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [215]

Count 19

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 21st day of July, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Salter Meat Co., certain slaughtering services, to wit, slaughtering of 37 head of beef, as shown on Invoice No. 15168 of the Southern California Meat Co., Inc., for a price per head which was, as the said defendants then and there well knew, in excess of the maximum price for said slaughtering permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 165, thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per head under the aforesaid Act and regulation then was: One dollar (\$1.00);

contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [216]

Count 20

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 24th day of July, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Salter Meat Co. certain slaughtering services, to wit, slaughtering of 31 head of beef, as shown on Invoice No. 15188 of the Southern California Meat Co., Inc., for a price per head which was, as the said defendants then and there well knew, in excess of the maximum price for said slaughtering permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 165, thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per head under the aforesaid Act and regulation then was: One dollar (\$1.00); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [217]

Count 21
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 16th day of August, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Salter Meat Co., certain slaughtering services, to wit, slaughtering of 26 head of beef, as shown on Invoice No. 15472 of the Southern California Meat Co., Inc., for a price per head which was, as the said defendants then and there well knew, in excess of the maximum price for said slaughtering permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 165, thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per head under the aforesaid Act and regulation then was: One Dollar (\$1.00); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [218]

Count 22

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 25th day of August, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A Segal doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to H. N. Sample certain slaughtering services, to wit, slaughtering of 49 head of beef, as shown on Invoice No. 15565 of the Southern California Meat Co., Inc., for a price per head which was, as the said defendants then and there well knew, in excess of the maximum price for said slaughtering permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 165, thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per head under the aforesaid Act and regulation then was: One Dollar (\$1.00); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [219]

Count 23

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 16th day of August, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Model Meat Co., certain slaughtering services, to wit, slaughtering of 24 head of beef, as shown on Invoice No. 15471 of the Southern California Meat Co., Inc., for a price per head which was, as the said defendants then and there well knew, in excess of the maximum price for said slaughtering permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 165, thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per head under the aforesaid Act and regulation then was: One dollar (\$1.00); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [220]

Count 24

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 25th day of August, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Model Meat Co., certain slaughtering services, to wit, slaughtering of 33 head of beef, as shown on Invoice No. 15564 of the Southern California Meat Co., Inc., for a price per head which was, as the said defendants then and there well knew, in excess of the maximum price for said slaughtering permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 165, thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per head under the aforesaid Act and regulation then was: One dollar (\$1.00); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [221]

Count 25
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 5th day of July, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Salter Meat Co., certain slaughtering services, to wit, slaughtering of 21 head of beef, as shown on Invoice No. 14966 of the Southern California Meat Co., Inc., for a price per head which was, as the said defendants then and there well knew, in excess of the maximum price for said slaughtering permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 165, thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per head under the aforesaid Act and regulation then was: One dollar (\$1.00); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [222]

Count 26

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 28th day of February, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Dana & Roberts certain meat items, to wit: Grade A beef as shown on Invoice No. 821 of the Central Packing Co., for a price per pound which was, as the defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was \$20.75; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [223]

Count 27
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 15th day of March, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon cash received journal of the aforesaid Central Packing Company showing payment of only \$6931.22 by Vernon Hotel & Restaurant Supply Co., on account of meat purchases by the latter, and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 148, 169, 239 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [224]

Count 28

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 2nd day of March, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon Invoice 952 of the aforesaid Central Packing Company, showing a sale of Grade A beef at 19 cents a pound; and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [225]

Count 29
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 15th day of March, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon cash received journal of the aforesaid Central Packing Company showing a loan to said Company of \$2294.01 by defendant, Lou Segal, and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 148, 169, 239 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [226]

Count 30

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 16th day of March, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon cash received journal of the aforesaid Central Packing Company showing a payment of only \$2918.55 by Vernon Hotel & Restaurant Supply Co., on account of meat purchases by the latter, and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 148, 169, 239 thereunder, which had been duly promulgated pursuant to the provisions of said Act: contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [227]

Count 31
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 16th day of March, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon cash received journal of the aforesaid Central Packing Company showing a loan by defendant Hyman Stillman of \$2235.50 to said company, and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 148, 169, 239 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [228]

Count 32
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 31st day of March, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon the general ledger of the aforesaid Central Packing Company showing total receipts of \$1,236,119.64, and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 148, 169, 239 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

[229]

Count 33
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 18th day of May, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon cash received journal of the aforesaid Southern California Meat Co., Inc., showing receipt on May 18, 1945, of \$1,420.00 from H. N. Sample, and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 148, 165, 169, 239 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [230]

Count 34
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 18th day of May, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon cash received journal of the aforesaid Southern California Meat Co., Inc., showing receipt on May 18, 1945, of \$3,468.42 from Salter Meat Co. and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 148, 165, 169, 239 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [231]

Count 35
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 13th day of October, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon check register of the aforesaid Southern California Meat Co., No. 2, showing the issuance of a check by said company to B. Turner on October 13, 1944, in payment of a loan, and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 148, 165, 169, 239 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [232]

Count 36
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 10th day of April, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon the general ledger of the aforesaid Central Packing Company showing cash sales of \$131,666.73 and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulations 169, 239 thereunder which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [233]

Count 37
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 24th day of September, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon invoice 5110 of the aforesaid Southern California Meat Co. No. 2 showing a total sum charged of \$174.23 and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [234]

Count 38
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 6th day of October, 1944, in the City of Los Angeles, County of Los Angeles,

State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon a statement of the aforesaid Southern California Meat Co. No. 2 showing total charges of \$356.60 and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 169, 239 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America [235]

Count 39

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 22nd day of September, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a

material respect upon a statement of the aforesaid Southern California Meat Co. No. 2 showing total charges of \$1,129.86 and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 169, 239 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [236]

Count 40

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 12th day of December, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon invoice 7251 of the aforesaid Southern California Meat Co. No. 2 showing a sale of 1 Grade A beef for the sum of \$91.30 and the said entry was false at the time of making of said record, all of which facts were then and there well known to said

defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [237]

Count 41

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 17th day of January, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon invoice 8135 of the aforesaid Southern California Meat Co. No. 2 showing a sale of two grade A veal for the sum of \$116.53 and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 169 thereunder, which had been duly promulgated pursuant

to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [238]

Count 42

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 18th day of December, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon invoice 7413 of the aforesaid Southern California Meat Co. No. 2 showing a sale of 1 grade A beef for the sum of \$154.38 and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [239]

Count 43

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 20th day of December, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon invoice 7456 of the aforesaid Southern California Meat Co. No. 2 showing a sale of 2 grade A veal for the sum of \$100.23 and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [240]

Count 44
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 28th day of December, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal did wilfully and unlawfully make or cause to be made an entry false in a material respect upon invoice 7579 of the aforesaid Southern California Meat Co. No. 2 showing a sale of 5 grade B veal, for the sum of \$226.98 and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [241]

Count 45

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 13th day of March, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Dana & Roberts certain meat items, to wit: Grade A beef as shown on Invoice No. 1201 of the Central Packing Company for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: \$20.75 per hundred pounds; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [242]

Count 46
(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 20th day of February, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Dana & Roberts certain meat items, to wit: Grade A beef as shown on Invoice No. 573 of the Central Packing Company for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: \$20.75 per hundred pounds; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America. [243]

Count 47

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 31st day of August, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Dana & Roberts certain meat items, to wit: Grade A veal, Grade B veal as shown on Invoice No. 18263 of the Southern California Meat Co. No. 2 for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: \$21.50 per hundred pounds for Grade A veal; \$19.50 per hundred pounds for Grade B veal; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [244]

Count 48

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 27th day of September, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Dana & Roberts certain meat items, to wit: 3 veal, grade A as shown on Invoice No. 5387 of the Southern California Meat Co. No. 2 for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: \$21.50 per hundred pounds; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [245]

Count 49

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 31st day of October, 1944, in the City of Los Angeles, County of Los Angeles,

State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Dana & Roberts certain meat items, to-wit: 3 veal, grade A, as shown on Invoice No. 6238 of the Southern California Meat Co., No. 2 for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the Said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: \$21.50 per hundred pounds; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [246]

Count 50

(50 U.S.C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 6th day of December, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants Southern California Meat Company, Inc., Charles M. King, Hyman Stillman and Lou A. Segal, doing business as aforesaid wilfully

and unlawfully did offer, solicit, attempt and agree to sell and did sell to Dana & Roberts certain meat items, to-wit: 3 veal, Grade B as shown on Invoice No. 7073 of the Southern California Meat Co., No. 2 for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: \$19.50 per hundred pounds; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

CHARLES H. CARR,

United States Attorney.

A true bill,

/s/ JOHN D. BOYLE,

Foreman.

Bail, \$10,000 each individual defendant.

[Endorsed]: Filed March 11, 1946 [248]

At a stated term, to-wit: The February Term. A. D. 1946, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday, the 25th day of June in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable J. F. T. O'Connor,
District Judge.

[Title of Cause.]

MINUTE ORDER, JUNE 25, 1946

This cause coming on ex parte; Norman Neukom, Esq., Assistant U. S. Attorney, appearing for the Government; Wm. Strong, Esq., Special Attorney, War Frauds Unit, being present; and the defendant Chas. M. King being present with his attorney, James A. McLaughlin, Esq.; Samuel Goldstein, Court Reporter, being present and reporting the proceedings:

Attorney Neukom informs the Court that the defendant Chas. M. King, and Charles M. King as president of the defendant Southern California Meat Co., desires to change his plea of not guilty to counts 16 to 20 as to defendant King individually, and counts 16 to 25, inclusive, and count 33 as to defendant Southern California Meat Co., whereupon, on motion of defendant Charles M. King, individually, and Charles M. King as president of Southern California Meat Co., the said defendant is allowed to change his plea from not guilty to counts to guilty, and upon being required to plead defendant Charles M. King individually enters his plea of guilty to counts 16 to 20, inclusive and defendant King as president of Southern California Meat Co. enters plea of said defendant company of guilty to counts 16 to 25, inclusive, and count 33 of the indictment herein; whereupon, on motion of Attorney McLaughlin, it is ordered that at the conclusion of the trial of the other defend-

ants herein the case of the defendant King be referred to the Probation Officer for investigation and report and that the presence of the defendant King be waived at the trial of the other defendants, scheduled to go to trial June 26, 1946. [249]

In the District Court of the United States in and for the Southern District of California, Central Division.

No. 19138

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAM ORMONT and

PHILLIP HIMMELFARB,

Defendants.

NOTICE OF APPEAL TO CIRCUIT
COURTS OF APPEALS

Name and address of appellant—Phillip Himmelfarb, 565 West Cole, Downey, California;

Name and address of Appellant's attorney—William Katz, 415 Chester Williams Building, 215 West Fifth Street, Los Angeles 13, California;

Offense—Alleged violation of Section 145 (b) Internal Revenue Code, 26 U.S.C. 145 (b)—(attempt to evade income taxes);

Judgment and sentence—Upon verdict of the jury that the defendant Phillip Himmelfarb was guilty of the offense alleged in Count II of the indictment, said defendant was, on the 16th day of June, 1947, sentenced to imprisonment for one year and one day in an institution of the penitentiary type to be selected by the Attorney General.

An order was made on the 16th day of June, 1947, denying [250] the motion of defendant Phillip Himmelfarb for judgment notwithstanding the verdict, and motion made in the alternative for a new trial.

That defendant Phillip Himmelfarb is presently on bail under motion for stay of execution.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the above-stated judgment, sentence and order.

Dated, at Los Angeles, California, this 18th day of June, 1947.

/s/ WILLIAM KATZ,

Attorney for Appellant.

Received copy of the within this 19th day of June, 1947.

/s/ JAMES M. CARTER,

United States Attorney.

/s/ WM. STRONG,

Asst. United States Attorney.

[Endorsed]: Filed June 19, 1947. [252]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO
CIRCUIT COURT OF APPEALS

Name and address of appellant—Sam Ormont,
407 North Cornwell Street, Los Angeles 33, California;

Names and addresses of Appellant's attorneys—
Daly B. Robnett and Benjamin F. Kosdon, 1007
Spring Arcade Building, 541 South Spring Street,
Los Angeles 13, California;

Offense—Alleged violation of Section 145 (b)
Internal Revenue Code, 26 U.S.C. 145 (b)—(attempt to evade income taxes);

Judgment and sentence—Upon verdict of the
jury that the defendant Sam Ormont was guilty of
the offense alleged in Count I of the indictment,
said defendant was, on the 16th day of June, 1947,
sentenced to imprisonment for one year and one day
in an institution of the penitentiary type to be
selected by the Attorney General.

An order was made on the 16th day of June, 1947,
denying the motion of defendant Sam Ormont for
judgment notwithstanding the [253] verdict, and
motion made in the alternative for a new trial.

That defendant Sam Ormont is presently on bail
under motion for stay of execution.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the above-stated judgment, sentence and order.

Dated at Los Angeles, California, this 24th day of June, 1947.

BENJAMIN F. KOSDON and
DALY B. ROBNETT,

By /s/ BENJAMIN F. KOSDON,
Attorneys for Appellant.

Received copy of the within Notice of Appeal to Circuit Court of Appeals this 24th day of June, 1947.

/s/ JAMES M. CARTER,
U. S. Attorney.

By /s/ VELOVIS BARKUS,
Attorney for Plaintiff.

[Endorsed]: Filed June 24, 1947. [255]

[Title of District Court and Cause.]

**ORDER TO TRANSMIT ORIGINAL
EXHIBITS ON APPEAL**

Upon the reading and filing of the Affidavit of Benjamin F. Kosdon and Daly B. Robnett, and good cause appearing therefor,

It Is Hereby Ordered that all original exhibits received in evidence in the above-entitled action be sent to the United States Circuit Court of Appeals, in and for the Ninth Circuit, pursuant to Rule 75 i of the Federal Rules of Civic Procedure, in connection with the appeal taken by defendant Sam Ormont, and that the Clerk of this Court make provision for the safekeeping, transportation and return thereof, as may be proper and necessary.

Dated at Los Angeles, California, this 26th day of June, 1947.

/s/ C. E. BEAUMONT,
Judge of the District Court.

Received copy of the within Order to Transmit Original Exhibit on Appeal this 26th day of June, 1947.

/s/ JAMES M. CARTER,
U. S. Attorney.

By /s/ VELOVIS BARKUS,
Attorney for Plaintiff.

[Endorsed]: Filed June 26, 1947. [260]

[Title of District Court and Cause.]

**ORDER TO TRANSMIT
ORIGINAL EXHIBITS ON APPEAL**

Upon the reading and filing of the Affidavit of William Katz, and good cause appearing therefor,

It Is Hereby Ordered that all original exhibits received in evidence in the above-entitled action be sent to the United States Circuit Court of Appeals, in and for the Ninth Circuit, pursuant to Rule 75 i of the Federal Rules of Civic Procedure, in connection with the appeal taken by defendant Phillip Himmelfarb, and that the Clerk of this Court make provision for the safekeeping, transportation and return thereof, as may be proper and necessary.

Dated at Los Angeles, California, this 24th day of June, 1947.

/s/ C. E. BEAUMONT,

Judge of the District Court.

[Endorsed]: Filed June 24, 1947. [263]

[Title of District Court and Cause.]

APPELLEE'S COUNTERDESIGNATION
OF RECORD ON APPEAL

Appellants Sam Ormont and Phillip Himmelfarb having heretofore filed separate Designations of Record on Appeal, the United States of America hereby designates the following additional portion of the record proceedings and evidence to be included in the Record on Appeal:

1. All the proceedings had in this trial, including all the matter taken down by the reporters either in open court, or in the chamber of Judge Peirson M. Hall.
2. All the opening and closing arguments of all counsel in the case, including counsel for defendants Sam Ormont and Phillip Himmelfarb; all argument and discussion pertaining to all instruction both requested and denied, and requested and given.

JAMES M. CARTER,
United States Attorney.

ERNEST A. TOLIN,
Assistant U. S. Attorney

WILLIAM STRONG,
Assistant U. S. Attorney

By /s/ WILLIAM STRONG,
Attorney for Plaintiff-
Appellee.

[Affidavit of Service by Mail]

[Endorsed]: Filed July 2, 1947.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 285, inclusive, contain full, true and correct copies of Indictment; Motion of Each Defendant to Dismiss; Motion of Each Defendant for a Bill of Particulars; Minute Order Entered March 12, 1947; Order on Motions of Defendants to Dismiss the Indictment and for a Bill of Particulars; Bill of Particulars; Minute Order Entered March 28, 1947; Notice of Motion to Consolidate Cases for Trial; Points and Authorities in Support of Motion to Consolidate Cases for Trial; Minute Order Entered May 14, 1947; Instructions Requested by Both Defendants; Minute Order Entered June 13, 1947; Verdict; Motion for Acquittal and for New Trial; Minute Order Entered June 16, 1947; Judgment and Commitment as to Each Defendant; Application and Motion for Immunity and for Order Barring Further Prosecution of Defendant Sam Ormont filed in case No. 19094-Crim.; Indictment filed in case No. 18,366-Crim., entitled United States of America, Plaintiff vs. Southern California Meat Company, Inc., et al., Defendants; Minute Order Entered June 25, 1946 in case No. 18,366-Crim.; Notice of Appeal of Each Defendant; Affidavit and Order for Transmittal of Original Exhibits as to Each Defendant; Designation of Record on Appeal and Statement of Points

on Appeal as to Each Defendant; Appellee's Counter-Designation of Record on Appeal; Supplement to Designation of Record on Appeal, etc., and Two Stipulations and Orders Extending Time to File the Record on Appeal which, together with Original Plaintiff's Exhibits and Original Defendants' Exhibits and copy of Reporter's Transcript of Proceedings on May 21, 22, 23, 26, 27, 28, and 29, 1947; June 3, 4, 5, 6, 10, 11, 12, 13 and 16, 1947; Partial Transcript of Proceedings before the Grand Jury on October 10, 1945 and Reporter's Transcript of Proceedings on May 19, 20 and 26, 1947 in the case of U. S. A., vs. Sam Ormont et al No. 19094-Criminal, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount of \$66.50, one-half of which has been paid by each of the defendants.

Witness my hand and the seal of said District Court this 9th day of September, A. D. 1947.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy Clerk.

Before the Grand Jury of the United States in
and for the Southern District of California,
Central Division.

In the Matter of
**SOUTHERN CALIFORNIA MEAT
COMPANY, et al:**

**REPORTER'S PARTIAL TRANSCRIPT
OF PROCEEDINGS**

Los Angeles, California, October 10, 1945.

SAMUEL ORMONT

called as a witness before the Grand Jury, having
been first duly sworn by the Foreman, was examined
and testified as follows:

Examination

By Mr. Strong:

- Q. Your name is Samuel Ormont?
- A. Yes.
- Q. What is your address?
- A. The business address is Imperial Highway at Culver Avenue, Southgate, California.
- Q. What is your home address?
- A. 407 North Cornell Street, Los Angeles.
- Q. What is the name of the business you operate? A. Acme Meat Company.
- Q. How long have you been operating under that name? A. Approximately 15 years.
- Q. You are the sole owner of that business?
- A. Yes.

(Testimony of Samuel Ormont.)

Q. Did you at any time operate on the premises of the Southern California Meat Company?

A. Yes.

Q. When was that?

A. Starting approximately May 1st, 1944, until approximately the end of December, 1944.

Q. And what did you have there, an office?

A. I had an office there, yes, on the dock.

Q. What was your business there?

A. You mean type of business?

Q. Yes. A. Wholesale meats.

Q. Did you have your cattle slaughtered by Southern California Meat Company?

A. Yes.

Q. You would bring in the cattle and they would slaughter them? A. Yes.

Q. You paid a service charge for the slaughtering? A. Yes.

Q. How much was that?

A. \$1.00 per beef and \$1.00 for calves.

Q. Calves were the same as beef?

A. The same.

Q. The California Meat Company, the Southern California Meat Company, I should say, kept certain parts of the carcasses, didn't they?

A. They didn't keep any parts of the carcasses. They kept part of the inedible portion of the animal.

Q. The carcass is all you got? A. Yes.

Q. They got the various other parts of the animals?

A. They got the inedible parts of the animal.

(Testimony of Samuel Ormont.)

Q. That was part of the charge for the slaughtering, the dollar and parts plus the dollar?

A. I do not know whether it was a charge; they got them, anyway.

Q. You paid an additional dollar per head?

A. Yes.

Q. All right, now, tell us what you got for the dollar from the time you brought the animal to the pen until you got it back.

A. According to the way they had the thing set up, the dollar was the actual slaughtering charge for the actual slaughtering of the animal, just the killing.

Q. You were told that was all?

A. When I came there I didn't know what the set-up was.

Q. Explain that. A. In what respect?

Q. As to what you were paying the one dollar for. A. For the killing of the animal.

Q. At what stage did you have to come in and do your own work?

A. Actually the only thing else we performed was the selling of the animals.

Q. From the time it came in alive, to the pen to the time you got the carcass ready for sale, that is all the service in between you got for the one dollar?

A. I don't know whether those were all services or not; there were other services involved, that came up later on, and those services were not included in the dollar charged for the slaughtering.

(Testimony of Samuel Ormont.)

Q. That is what you were told?

A. It wasn't what I was told; it was the way the thing was handled. I was not told anything.

Q. Explain what you mean by that.

A. We had a service charge of a dollar for the actual service, and there were some other plant charges that constituted stamping of the meat, handling the beef out of the hot boxes after the cattle were slaughtered, and the beef rolled out and loaded onto trucks for us; sometimes we were granted additional rail space; sometimes extra cattle were handled at the yards and fed for several days, sometimes eight or ten days, before actual slaughter; and there were several men killing at the same time; and sometimes before our turn came we had seven, eight or ten days to wait before our animals were slaughtered; and they would unload, water and feed the cattle and take care of that; and when they would grant us the use of their trucks and delivery services, they would be recompensed for the extra services.

Q. You mean they charged you first and gave you the trucks later?

A. No, after the animals were slaughtered and in the hot boxes—

Q. Isn't what you mean this: When you had your cattle slaughtered you got an invoice showing how many head at any time you had slaughtered for a dollar each? A. Yes.

Q. And the total number of dollars?

A. Yes.

(Testimony of Samuel Ormont.)

Q. That was for slaughtering? A. Yes.

Q. You got an invoice or request from them usually for some sum of money?

A. Yes.

Q. And what was that additional money for?

A. That was for those additional charges, the services.

Q. Did you get those services?

A. Yes, the services were performed.

Q. Were you present when the services in each instance were performed?

A. No, part of my days was out buying, and I wasn't around here all the time; I was away on mornings, and that is when they would be performed—the animals slaughtered at night and pushed out of the hot boxes the next morning into the main selling coolers.

Q. Is that the services you are talking about?

A. One type of service.

Q. Did you have to pay any rent down there?

A. No exact rent charged except occasionally there would be rail space, additional space; that would come in on the extra charges.

Q. Did you pay rent for the rails?

A. The rails were charged on these additional charges; we would have rail space, but when our rails became overcrowded we used extra rail space; and we paid additional charges for that, I don't know just how much.

Q. I want to get this straight. I want you to tell us what you know about it or what you were told by Mr. King about it.

(Testimony of Samuel Ormont.)

A. I said that I was away part of the time, but at certain intervals, like afternoons, I had, for instance, two rails, using two rails in the plant, and, say, if I used four rails, then I was using extra space.

Q. Did you pay rental for the two rails?

A. There was a charge for it.

Q. For the first two?

A. No, not for the actual rails; I had no additional charges for that.

Q. You got, you said, two rails—

A. Two, we used always.

Q. And the cooler, was that before or after the hot box?

A. I don't know what you mean by before or after.

Q. The cooler, that is, where your animals or carcasses were brought.

A. That is after the animals are slaughtered, they were rolled out of the hot box into the main box.

Q. So that the Grand Jury can understand, tell them what happened to the animals after they are brought into the pens. They got through the slaughtering room?

A. You mean the entire operation?

Q. In general.

A. The procedure ordinarily is that the animals are brought in to the Union Stockyards. The animals are brought in, unloaded at the plant, and yarded into individual pens. And sometimes they

(Testimony of Samuel Ormont.)

remain there several days, sometimes they are ready for immediate slaughter, and when the animals are slaughtered, they do the slaughtering; they are tagged for identification, because they have to have some means of identification, and when the animals then are slaughtered, they come in the hot boxes; they would ordinarily remain over night and early the next morning be assigned to our rails, or to the rails of the particular owner; and our two rails we had were the last two rails in the box, and that would be where the animals would be, should be, before the next procedure, which would be the selling cooler.

Q. The place they stopped before that, that is another cooler—— A. I don't understand.

Q. The hot box is the cooler or the room in which they are hung to lose the body heat?

A. Yes.

Q. When they lost the body heat and came down to a certain degree of temperature, they were moved in the cooler?

A. In the selling cooler.

Q. In the selling cooler you had two rails?

A. Yes.

Q. Any other rails you had were an extra charge? A. Yes.

Q. Was it stated on there what it was for?

A. No, just a similar form set up for all the services inclusive.

A Grand Juror: Was that by the head?

The Witness: The slaughtering, yes.

(Testimony of Samuel Ormont.)

A Grand Juror: The extra service?

The Witness: No, as a matter of fact, I wouldn't know definitely what each particular animal was assessed for the extra charges; the bills were presented and paid as such.

A Grand Juror: You said when you left your cattle there seven or eight days Mr. King fed and watered them?

The Witness: Yes.

A Grand Juror: You paid for the feed?

The Witness: We have our own feed up there, but they would furnish the men to feed the cattle.

A Grand Juror: How many times did that happen?

The Witness: That happened several days in the nine months I was there; it happened consistently, there was sometimes a period of time of four to ten days that would expire before the animals were slaughtered.

Q. (By Mr. Strong): Did you pay for these extra charges by check?

A. They were handled in two ways. Originally they were made out in checks, and some of the checks were made to the Southern California Meat Company, and others were made out to cash.

Q. Why were they made out to cash?

A. They asked for it in that manner.

Q. Who asked for it? A. Mr. King.

Q. Did you ask him why he wanted the checks made to cash? A. No.

(Testimony of Samuel Ormont.)

Q. How did you enter it on your books?

A. As paid to the Southern California Meat Company as additional charges.

Q. Without indicating what the charges were for?

A. We applied them to the account of slaughtering charges and to the incidental expenses.

Q. A certain part of those charges were for extra rail space?

A. Not charges definitely for rail space, but everything included.

Q. All right, tell us again the things you paid extra charges for.

A. Running the meat out of the hot box, stamping the beef, each particular cut; the cattle run onto the docks and loaded for us; and the use of the trucking equipment, and the unloading of the cattle and feeding and watering of the cattle in the yards until ready for slaughter.

Q. Do you recall between the period of June 1st and December 31st, 1944, how much you paid for these extra services.

A. No, not offhand, but I think it was between \$6500.00 and \$7000.00.

Q. Approximately \$7700.00?

A. I don't know.

Q. About how many head of cattle did you have slaughtered during that period of time?

A. I would estimate—we varied, because our kill was heavier when we first started slaughtering,

(Testimony of Samuel Ormont.)

and it gradually dwindled down, because I wasn't getting the slaughtering I did when I first went in the place.

Q. Would it be accurate to say you had about 4250 head of cattle between June 1st and December 31st? A. I don't know exactly.

Q. Your books would show?

A. The books would reflect how many, yes, because we have a complete record of that for all purposes.

Q. You kept accurate records?

A. Yes, each animal that was slaughtered, we have a record of each animal.

A Grand Juror: Before you came to the packing plant did you pay those services at other plants?

The Witness: No, in another plant I was in I had to see the animals were handled, see to the finishing and skinning and everything else; I had to perform that work myself.

A Grand Juror: How did you know the service charges you paid were not out of line?

The Witness: Personally I wouldn't know; I couldn't tell; I had no method of determining that, because I have been in business several years, and when I first started in July in 1930, I paid as high as \$3.00 a beef to have the actual slaughtering performed and I did all the other services myself, including the stacking of the beef, and everything else.

A Grand Juror: How did you know these extra charges were correct?

(Testimony of Samuel Ormont.)

The Witness: I had no way of determining it, because I had to be satisfied with whatever was presented to me; it was my last recourse; that was the last packing plant here that was performing outside custom slaughtering.

A Grand Juror: You had no way of actually knowing what services you did get?

The Witness: Except what we knew was actually performed.

Q. (By Mr. Strong): Did any of the others pay any rental space for extra rails?

A. I couldn't tell, I never interfered or knew what happened to the other man; I had my own business to take care of.

Q. Who told you part of these charges were for the extra rail space?

A. As the bill was presented—I know one instance where a man had an entire cooler, paid a rental, and we used part of that at times after he had moved out of that cooler, and at times we had to use it, and I imagine part of that was charged, because—

Q. When the bills were presented to you did they say extra cooler space, rail space?

A. No.

Q. I am trying to find out how you knew you were paying for extra cooler space?

A. Before we could use space we had to check through the office.

Q. Did the office say you had to pay rental?

A. You don't get anything gratis around any packing plant.

(Testimony of Samuel Ormont.)

Q. As a matter of fact, you paid all the charges presented to you because you wanted to stay in business and you were going to pay whatever was asked? A. Yes.

Q. You do now know, as a matter of fact, what services were rendered, were rendered to you, which you paid—

A. I couldn't prorate them, if that is what you mean, and there wouldn't be any particular service at any particular price.

Q. Did you discuss this problem of what was being given to you for the extra charges, did you discuss this with Mr. King?

A. No, because the bills were presented and I made the checks, and I very seldom went in their office.

Q. You did not learn from Mr. King that you were paying for extra cooler or extra rail space and cooler and other things?

A. I had very few conversations with Mr. King.

Q. You said you paid rental—you paid for cooler space, for extra rails, because you had your carcasses hanging on extra rails, besides the two assigned to you? A. Yes.

Q. When did you leave the premises of Southern California Meat Company?

A. I believe our last day was December 29, 1944.

Q. How did you happen to leave there?

A. I started looking for another place in September, 1944. I was trying to negotiate for a little packing plant. Gradually we were getting freezed

(Testimony of Samuel Ormont.)

out, it seemed like there was quite a bit of favoritism going on, and other men were getting a heavier slaughter; every time we bought cattle we would have to put them in the yard for several days, and we couldn't operate under that condition; and I started looking around, gradually got myself lined up at another plant.

Q. You were actually told to get out?

A. No, I got out before the squeeze came on. We were slaughtering seven or eight hundred cattle a month, and it was gradually was coming down to about 45 or 50 a week, and we were being cut down 25 per cent of our business.

Q. Who was doing the squeezing?

A. Whoever had control of the slaughter.

Q. You said you saw a lot of squeezing of somebody.

A. Well, we would come into the office and tell them we got so many cattle to slaughter, and they handled them in some way; we would itemize the kill and try to allocate them in some way so that we would get some slaughter so that we wouldn't be out of business entirely; and instead of getting a normal amount, they kept cutting down so that before we knew it we had very little slaughter.

Q. Whose cattle were being slaughtered?

A. The Economy Meat Company.

Q. Who were really the ones getting the slaughter? You said they were squeezing you.

A. The California Meat Company, and outfit in there, and Southern California Meat Company

(Testimony of Samuel Ormont.)

No. 2, and Salter Meat Company, and Harry Sample, we were all on a par. It seems as though the associates were Southern California Meat Company No. 2 and California Meat Company.

Q. California Meat Company was the one doing the slaughtering?

A. No, there was Southern California Meat Company that had control of the plant; Southern California Meat Company No. 2 was the big slaughterer, and Southern California Meat Company slaughtered—

Q. Who was Southern California Meat Company No. 2?

A. I don't know; it was operated in some way, some sort of management; two men handled it, and I don't know exactly what the intricacies were.

Q. Who were they?

A. Hyman Stillman and Lou Siegel.

Q. You moved out at the end of 1944?

A. My last day was December 29th.

Q. You entered all these payments you made both on the invoices which showed the number of head slaughtered? A. What?

Q. You entered on your books all charges made to you by Southern California Meat Company?

A. Yes.

Q. Did you make any payments to Southern California Meat Company after you left there?

A. Yes, I owed him one bill, and I paid it, I think one bill.

Q. About how much was that?

A. I think about \$135.00 or \$140.00.

(Testimony of Samuel Ormont.)

Q. Yours was the Acme Meat Company?

A. Yes.

Q. You said before you paid no rentals of any kind except for the rails?

A. That is right.

Q. Did you pay the Southern California Meat Company in February the sum of \$820.00?

A. I couldn't remember; I wouldn't know.

Q. Also the sum of \$914.00 the same day, and also \$1021.00, making a total of about \$2700.00?

A. I couldn't tell unless I would see the records.

Q. This was after you left?

A. I wouldn't know.

Q. You just said the only payment you made was \$100.00? A. \$135.00 after I left.

Q. This \$135.00 was the only payment you made after you left?

A. That was the only payment I remember.

Q. You don't recall making a payment of \$2700.00 in February? A. No.

Q. If you did pay it you would know, wouldn't you?

A. That is a pretty substantial sum.

Q. If you paid that sum in one day you would recall it? A. I think so.

Q. The day is February 9th, 1945. Do you recall three sums, that is, \$820.00 and \$914.00 and \$1021.00?

A. I don't remember anything like that in February.

Q. Don't you remember?

A. No.

(Testimony of Samuel Ormont.)

Q. You did not owe them any rent of any kind?

A. No, I think I was pretty well cleared up on the last payment.

Q. The last payment was for the services——

A. Extra services, I believe.

Q. The same kind you were testifying to?

A. Yes.

Q. You did not in February, 1945, make any payments for rent to Southern California Meat Company? A. No, not that year.

Q. Did you ever make payments for rent to Southern California Meat Company before that?

A. Except the rail space, that would be the only rental.

Q. That would show on the invoices that said slaughtering or something? A. Yes.

Q. You discussed your relations with Southern California Meat Company with Mr. Ward and Mr. Wells, of the O.P.A.? A. Yes.

Q. You told them everything that happened?

A. Yes.

Q. Everything you told them was the truth?

A. Exactly what I am telling you.

Q. You did discuss it in detail with them?

A. Yes, very much so.

Mr. Strong: Are there any questions?

Q. (By Mr. Veale): You mean to say up to the time you went in business down there you had never paid any such excessive charges?

A. As which?

(Testimony of Samuel Ormont.)

Q. As these extra invoices you paid, extra services? A. I don't understand.

Q. Up to the time you went in business down there at this place, you had never paid any extra charges for slaughtering?

A. I don't know what you mean by extra charges.

Q. These invoices.

A. For additional services and whatever was presented to me.

Q. Had you ever paid any such charges before, anywhere? A. Not that I remember.

Q. You went in business there and the very first bill that was rendered to you was the one dollar slaughter per head? A. Yes.

Q. And the next bill presented to you was for an additional amount? A. Yes.

Q. You mean to tell us that you never questioned that?

A. No, I didn't, and I was in two different packing companies and I had been eliminated in my business, and I wanted to remain in business, and I didn't question it.

Q. You wanted to make a profit? A. Yes.

Q. Let us assume you had 200 cattle come in and they billed you \$200.00 for the slaughtering?

A. Yes.

Q. And they billed you for \$400.00 for extra slaughtering charges; you paid it?

A. I wouldn't know whether—

Q. Did you pay it? Answer the question.

A. I paid what?

(Testimony of Samuel Ormont.)

Q. They had billed you \$400.00 extra slaughtering charge, you would have paid it?

A. If you state the question properly, maybe I can answer it.

Q. Let us assume a kill of 200 cattle at this particular time. A. Yes.

Q. After the cattle had been killed they billed you, billed you for \$1.00 per head slaughtering.

A. Yes.

Q. Then, in addition to that, they billed you for extra slaughtering charges \$400.00.

A. You are attributing all of that to the actual slaughtering?

Q. I am asking you a question, if you didn't get a second invoice for \$400.00, in addition.

A. You mean I paid \$400.00.

Q. Yes. A. Yes.

Q. You did not ask anybody about that?

A. No.

Q. All right. The following week we will assume you had another kill of 200 and they billed you \$200.00, regular slaughtering charge, but they sent you a second bill for \$1000.00. Would you have paid that?

A. If the charges seemed excessive, I would have to stop my business immediately; I couldn't operate—

Q. Would you have paid that \$1000.00?

A. I couldn't have paid \$1000.00; I was not making that much money there.

(Testimony of Samuel Ormont.)

Q. You mean to say that at no time did you ever discuss these extra charges with anybody down there?

A. I never discussed them; they seemed within reason and I paid them.

Q. How did you find out or determine them to be correct—

A. I didn't find out, I didn't question any charges; I assumed they were in reason. In 1931 I was paying \$3.00 actual services—

Q. Suppose some stranger had walked in with an invoice for \$200.00, and you did not know anything about it. Would you pay it?

A. Not to a stranger.

Q. (By Mr. Strong): I show you some of these invoices, for instance, 14941, dated June 30th, 1944, Acme Meat Company, slaughter, \$548.00. That is not the type we are talking about, the extra charges?

A Grand Juror: In other words, you were paying the extra charges because you were able to stay in business?

The Witness: Absolutely, if I couldn't see my way clear I was going to get out.

A Grand Juror: Who owned the California Meat Company?

The Witness: I think originally California Meat Company was owned by G. D. Woodward.

Q. (By Mr. Veale): You did not know from one invoice to the next whether you were going to stay in business?

A. Absolutely, if it became excessive, I would stop operations.

(Testimony of Samuel Ormont.)

Q. During your entire operations there, from the time you went in to the time you went out, you never knew whether you were solvent or insolvent?

A. I never did go out of business.

A Grand Juror: Are you in business?

The Witness: Yes, I have my own plant.

A Grand Juror: Did you make money while at the Southern California Meat Company?

The Witness: Yes, we showed a nice profit.

Q. (By Mr. Strong): Take invoice 14941, Acme Meat Company, June 3d, 1944.

A. That is about the type.

Q. It says slaughtering, \$548.00. A. Yes.

Q. That was June 30th.

A. I don't remember any dates; it is too vague to remember, too far back to remember.

Q. According to this, on June 30th you paid \$548.00 in extra services, and on July 12th, 1944, you paid \$398.00 for extra services, according to this invoice?

A. Sometimes two might be together; sometimes I paid two weeks together.

Q. Did you ever receive any invoice that said anything else except slaughtering or what the extra charges were concerning?

A. I think that is all.

Q. Just a minute, the word slaughtering covered all so-called services?

A. That is correct.

A Grand Juror: What proportion of the price would this slaughtering charge of the carcass be.

(Testimony of Samuel Ormont.)

In other words, after you finally sold it to a butcher, what was, in round figures, what proportion of that sales price would be the slaughtering charges of \$1.00 a head be?

The Witness: The expense attributable to that?

A Grand Juror: Yes.

The Witness: Just the slaughtering, that is a very intricate question. It is subject to how cheap you buy the live animal; if we bought the animal cheap enough, it would be much more profitable to us than if we paid a greater price for it, of course.

A Grand Juror: 2 per cent, 1 per cent?

The Witness: I slaughtered quite a few light cattle, and the killing charge would amount to about three-quarters, between three-quarters and a cent a pound.

A Grand Juror: What per cent of that per pound?

The Witness: If an animal sold for \$100.00, it would be about 3 per cent; if your selling price would be \$100.00, your cost of operation would be about 3 per cent, attributable to that.

A Grand Juror: If you double the price, it would be 6 per cent?

The Witness: If you got \$200.00 out of the animal?

A Grand Juror: Two dollars for slaughtering instead of one.

The Witness: 2 per cent.

A Grand Juror: How far could that go before the thing went to losing money?

(Testimony of Samuel Ormont.)

The Witness: It is all subject to how cheap you buy animals, to start with. We are regulated in our buying of livestock, according to the maximum and minimum, and if we buy cattle at the minimum price, the cost against that would be very negligible, because we would take as high as \$15.00 on a beef on this basis, and on a \$3.00 charge we could make \$10.00 to \$12.00.

A Grand Juror: You said a while ago you could pay only up to a certain limitation before you started losing money. How would you know when that got to be too much if you got an invoice later for slaughtering in a certain amount, would you know you lost on that particular meat?

The Witness: Yes, on a particular load of cattle we know how much that animal cost us on the hoof, and take the killing charge out of that, we know immediately whether we are losing or making money.

A Grand Juror: How many times did you lose?

The Witness: I don't think I had an instance of once where I lost.

A Grand Juror: In other words, you came out with a profit?

The Witness: In my particular instance, I did the livestock purchasing myself; I had no outside buyers.

A Grand Juror: It so happened you bought them at a low price and got low slaughtering prices?

The Witness: I bought myself.

(Testimony of Samuel Ormont.)

A Grand Juror: You had no control over the killing, and you said you never questioned them. It would have to be bought low before you made money.

The Witness: As long as they were not excessive.

A Grand Juror: They would be fairly consistent, per head, you wouldn't figure at one time it would be twice that per head?

The Witness: I wouldn't figure anyone operating a business would jump me three or four times, but that the charges were constant.

A Grand Juror: They were pretty constant all the time you were there?

The Witness: Yes.

A Grand Juror: How many places did you slaughter in?

The Witnesses: No other places. I was in one plant 13 years, and I was ousted there because they wanted all facilities themselves, and I went into another plant and I was ousted there because they wanted all the killing facilities for themselves, and the last place, that was the last resort, and that is where I had to stick it out until I could find my own place.

Mr. Strong: That is all.

(Witness excused.)

I, O. Edgar Abbott, do hereby certify that I was the official reporter for the United States Grand Jury in and for the Southern District of California, Central Division, on October 10, 1945, that the foregoing transcript consisting of pages numbered 1 to 25, inclusive, is a full, true and correct transcript of the testimony of Samuel Ormont, given before the Grand Jury on October 10, 1945.

/s/ O. EDGAR ABBOTT,
Official Reporter.

[Endorsed]: Filed July 24, 1947.

In the United States District Court for the Southern District of California, Central Division.

No. 19138 Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAM ORMONT and PHILLIP HIMMELFARB,
Defendants.

REPORTER'S TRANSCRIPT OF
PARTIAL PROCEEDINGGS

Appearances:

For the Plaintiff: James M. Carter, United States Attorney, Los Angeles 12, California; by William Strong, Assistant United States Attorney, Los Angeles 12, California.

For the Defendant Ormont: Daly B. Robnett, Esq., and Benjamin Kosdon, Esq., 1007 Spring Arcade Bldg., Los Angeles, California.

For the Defendant Himmelfarb: William Katz, Esq., 415 Chester Williams Building, Los Angeles 13, California.

Los Angeles, California, May 21, 1947
10 o'Clock A.M.

The Court: Any ex parte?

The Clerk: I believe not, your Honor.

The Court: Call the calendar.

The Clerk: No. 19094, United States v. Sam Ormond and Phillip Himmelfarb, doing business as Acme Meat Company. Further hearing on application for filing in Emergency Court of Appeals.

Mr. Strong: Not ready on that for the government.

The Court: I will continue that until 10:00 o'clock tomorrow morning.

The Clerk: No. 19138, United States v. Sam Ormont and Phillip Himmelfarb.

Mr. Strong: Ready for the government.

Mr. Robnett: If your Honor please, as to the defendant Sam Ormont, I wish to state to your Honor that neither the indictment nor the bill of particulars which were furnished disclose the basis of the figures or items which the government claims are omitted from the income which were not accounted for, and does not show what items they are nor from whence they come, consequently it has

been impossible for us to prepare for a defense without knowing those items, and therefore we are in the dark as to those and are not absolutely ready for trial on that account.

The Court: Your motion is for a continuance?

Mr. Robnett: Yes, your Honor. I believe it would be in order, a continuance with a condition that they furnish us the information that is now requested, the basis of those figures and where they got them, so that we will know how to defend against them.

The Court: As I indicated yesterday, your demand for a bill of particulars was passed upon by another judge of this court.

Mr. Robnett: That is correct, your Honor.

The Court: The order which he made allowing a bill of particulars, those particulars have been furnished. I regard that as the law of the case and will therefore deny your motion for continuance.

The defendants are present in person?

Mr. Robnett: Yes.

Mr. Katz: Yes, your Honor.

The Court: The appearances for the government are William Strong?

Mr. Strong: That is all, your Honor.

The Court: The appearances for the defendant are Mr. Robnett—

Mr. Robnett: Mr. Kosdon for Mr. Ormont only.

The Court: Mr. Benjamin Kosdon for the defendant Ormont?

Mr. Robnett: Just for Mr. Ormont. There has been a substitution as to Mr. Himmelfarb. I believe it has been filed.

The Court: You are appearing for both defendants?

Mr. Robnett: No, your Honor, just for Mr. Ormont.

The Court: Your are appearing for Mr. Ormont also?

Mr. Robnett: Yes, your Honor.

The Court: The appearance for Mr. Himmelfarb is?

Mr. Katz. Mr. Katz.

The Court: William Katz?

Mr. Katz: Yes, your Honor.

The Court: Was the motion for a continuance made on behalf of all defendants, Mr. Katz?

Mr. Katz: If the Court please, we will adopt the motion, the request made by Mr. Robnett on behalf of Mr. Ormont, as a request on behalf of the defendant Himmelfarb without remaking it or restating it.

The Court: In view of the fact that there are two defendants and each have separate counsel, may it be agreeable that any motions or objections or stipulations made by either defendant may be made on behalf of both defendants unless they are specifically disclaimed?

Mr. Katz: Yes, that is satisfactory.

Mr. Robnett: That is satisfactory.

The Court: Is it so stipulated?

Mr. Katz: So stipulated.

Mr. Robnett: So stipulated.

Mr. Strong: So stipulated.

The Court: Very well.

Mr. Robnett: Will that be considered as being separately made by each one?

The Court: That will be considered as being separately made and by each one as thought separately stated.

Mr. Robnett: Thank you.

The Court: Unless it appears obvious from the statement or objection that it applies only to one person, but such general motions or objections that are made throughout the trial will apply to both.

If it is your intention to object on the ground that the indictment does not state an offense, I might suggest, if agreeable to you, that you may make record at this time rather than before the impanelment of the jury.

Mr. Strong: That has already been taken care of by another judge.

The Court: To preserve their record they must make it again.

Mr. Robnett: As to count 2, on behalf of Mr. Ormont we do contend that it does not state an offense. That refers to the alleged income of Mr. Himmelfarb only.

The Court: Very well. Now what I had in mind was whether or not you anticipated making an objection on the same grounds that you made your motion for a continuance, that the indictment does not state an offense together with the bill of particulars furnished.

Mr. Robnett: I do make that as to each and every count, that it does not, even connected with the bill of particulars, it still is insufficient to state

the particulars which my motion for a bill of particulars specifies, or any of the counts, to state an offense against my client.

The Court: That is made on behalf of both defendants?

Mr. Katz: If the Court please, I intend to more specifically make that motion, if I may. I had waited with the thought in mind that that motion is more—

The Court: You need not do it now.

Mr. Katz: If it is agreeable to your Honor I would just as soon.

My thought was that it comes more properly at the time of the evidence is offered. I was waiting for that time.

The Court: We will wait until that time.

Mr. Katz: If your Honor will hear it now, we will make it. Whichever is your pleasure.

The Court: All right. The motion I suppose should be made in the absence of the jury, whatever motion you have to make in connection with that, and we have the panel here, and it might lend itself to more orderly procedure in the event we proceeded to impanel the jury first.

The clerk will fill the box.

(At this point a jury of 12 and one alternate were duly impaneled and sworn.)

The Court: Very well. I see it is now 12:00 o'clock. How long will you be in your opening statement, Mr. Strong?

Mr. Strong: Not more than 10 minutes.

The Court: Do you want to make that before recess?

Mr. Strong: May I do it after recess?

The Court: I will not be able to proceed immediately at 2:00 o'clock because I have some other matters set.

Mr. Katz: If your Honor please, I believe there are some motions that your Honor may want to hear in advance of the time the jury is to try this issue.

The Court: We will recess until 2:00 o'clock, and the jury is admonished not to discuss this case among yourselves or with any other person, nor to form or express a conclusion concerning it until it is finally submitted to you for decision. You will retire now. The bailiff will show you where the jury room is. You will return to the jury room at 2:00 o'clock and await the call down here. We may be a little delayed because I have some other matters on the calendar, so if you will just wait until you are called.

Recess until 2:00 o'clock.

Mr. Strong: Will your Honor instruct the witnesses to return?

The Court: Yes. All persons who are here as witnesses, whether subpoenaed or whether here voluntarily, whether here for the Government or for the defendants, are now ordered and directed to return to this courtroom at 2:00 o'clock.

The remaining jurors are excused until notified.

(Whereupon, at 12 o'clock p. m., a recess was taken until 2:00 o'clock p. m. of the same date.)

Los Angeles, California, May 21, 1947
2:00 o'Clock P. M.

(Interruption for other court matters.)

The Court: In the Ormont and Himmelfarb matter, I see now that it is practically 10 minutes after 3:00, and I doubt if we could get much more than a half hour's work in today. There is no use keeping you around here, and if agreeable I will continue that until 10:00 o'clock tomorrow morning, directing the defendants to return at that time and all persons who are here as witnesses, whether under subpoena or otherwise, or whether for the defendants or for the Government, are likewise ordered and directed to return at 10:00 o'clock tomorrow morning.

May it be stipulated that the bailiff may excuse the jury until 10:00 o'clock tomorrow morning without bringing them down to court?

Mr. Strong: So stipulated.

Mr. Katz: So stipulated.

Mr. Robnett: So stipulated.

Mr. Strong: May I ask that the Government's witnesses remain with me for a few minutes outside?

The Court: Mr. Strong asks that the Government's witnesses consult him before leaving the building.

Los Angeles, California, May 22, 1947

10:00 o'Clock A. M.

The Court: Ex parte?

The Clerk: No ex parte, your Honor. Further trial.

The Court: United States v. Ormont and Himmelfarb.

Mr. Strong: Ready.

Mr. Katz: Ready.

Mr. Robnett: Ready.

The Court: The defendants are present?

Mr. Robnett: We have some motions to make.

The Court: Yes.

Mr. Strong: Your Honor, before they start the motions, may I say this. In the other case your Honor has given me until tomorrow morning. Now I have received a teletype from Washington, D. C., which indicates that there is absolutely no legal basis for this motion. We are getting together memorandum to present to your Honor in brief form to show exactly where in the statute there is no basis for going to the Emergency Court of Appeals because the Secretary of Agriculture didn't have to approve anything with reference to cattle until June 30, 1945. Then we will show your Honor that from that time on he did everything that was necessary. We will show your Honor that that amendment dealt specifically with cattle and that there are decisions which will point out to your Honor—I would like to have a little more time than Friday because I just can't do it. If you would give me until Monday we can get it out.

The Court: Very well. The other matter can go over until Monday at 10:00 o'clock.

On the other section of the motion, I have read the testimony of Sam Ormont. I think that should be transcribed. I do not wish to disclose the rest of the proceedings—it should be transcribed and a copy of that given to the defendants—because there are some questions in there specifically concerning invoices. I will return this to you, and can you have your office transcribe it?

Mr. Strong: I don't know whether we can have our office, but we can have the reporter prepare a copy at counsel's expense.

The Court: Do you wish it?

Mr. Robnett: We would like to have one.

Mr. Strong: I will have that prepared by the reporter then.

The Court: Very well. Mr. Katz?

Mr. Katz: If the Court please, this is a motion on behalf of the defendant Himmelfarb to dismiss the indictment as against him and also to exclude, and an objection to the introduction of any evidence under that indictment as against him.

I make those two motions together because the facts and the law applicable are applicable to both of the motions.

If the Court please, as to Counts 3 and 4 we don't concern ourselves with those counts because they are not directed as against the defendant Phillip Himmelfarb. He is only concerned with Count 1 and Count 2. As to Count 1 he is mentioned in that count—he doesn't know and I don't know and we haven't

any way to tell—how or in what manner he is concerned with that Count 1 because the count is one that is directed as to a return filed and a tax alleged to be due and owing by the defendant Sam Ormont.

In that count it is alleged that Sam Ormont and the defendant Himmelfarb willfully attempted to defeat a large part of the income tax due and owing by Sam Ormont to the United States for the calendar year of 1944 by preparing and causing to be prepared and filing and causing to be filed with the Collector of Internal Revenue for the Sixth Internal Revenue Collection District, and so forth, a false and fraudulent income and victory tax return.

Now if the Court please there is nothing in Count 1 of the indictment, and there has been nothing added by way of aider by reason of the bill of particulars that has been furnished by the United States Attorney, which bill of particulars is a very meager one and doesn't actually go beyond, substantially beyond, the indictment itself in so far as furnishing any information. There is nothing from that Count 1 by which the defendant Phillip Himmelfarb can in any way determine how he was supposed to have attempted to defeat and evade any part of the income tax of the defendant Sam Ormont that he owed by reason of the filing of a return by that defendant Sam Ormont, or any tax that may have been due or owing by him. This isn't a situation where the defendant Sam Ormont is an accountant, a bookkeeper, an attorney, or in any capacity—

The Court: Ormont?

Mr. Katz: Pardon me, the defendant Himmelfarb—in which he would be acting in the preparation of income tax reports or income tax returns for and on behalf of any other person.

I believe in an indictment of this type and kind it is necessary that it appear from the indictment how or in what manner the defendant Phillip Himmelfarb is connected with a tax return filed by some other person or income tax that is due and owing by some other person. That does not appear at all from Count 1.

And of course where a reference is made to an income tax return filed by a person other than the defendant, an income tax due and owing thereon, the matters of gross income, net income, deductions, all of those things are not within the knowledge of the defendant whose income tax return it is not.

I can understand that there is and might be a basis in some case for stating that some of the information is within the knowledge of the defendant, but that can only be true in those cases in which the report or the return is that filed by or on behalf of the defendant accused. But with respect to Count 1 that is not the situation. The defendant Phillip Himmelfarb cannot, in the absence of any actual showing to the contrary, have or be presumed to have knowledge of the gross income or net income or deductions or any other facts relative to the filing of the income tax return by the defendant Ormont, nor is he in a position to know and can he come into this court and adequately or at all prepare a defense to an indictment and to a count in an indictment which charges that he with

somebody else prepared a return of the other defendant without indicating what it is that the Government is relying upon that connects him, that he is supposed to have done in the way of preparing or causing to be prepared, filing or causing to be filed.

The Court: Was this point raised before?

Mr. Strong: Yes, your Honor.

The Court: And argued?

Mr. Katz: If the Court please, the point as I have stated it—

The Court: You may raise it again at any time, you understand.

Mr. Katz: I understand that, but I wanted to make this clear to the court: I came into this case five days ago—it might be six; I think it is about five—and was not in the case representing the defendant Phillip Himmelfarb or in any way connected with the case until then. I am not in a position to make any statements to your Honor as to what was actually argued before any other court previous to this time.

The Court: As you have stated your position, it seems to me that it becomes a question as to whether Section 145 of the Internal Revenue Code modifies Section 550 of Title 18. The defendant Himmelfarb is charged here as a principal. Under Section 550 of Title 18 it is provided that “whoever directly commits any act constituting an offense defined as any law in the United States, or aids, abets, counsels, commands, induces, or procures its commission is a principal.”

So that the procedure which was followed is to charge all persons not simply as aiders and abettors, as used to be done—and I don't know whether it is still done in the state court or not—but to charge them directly as principals.

This indictment, however, states it is brought under Section 145 (b) of the Internal Revenue Code. Under the new criminal rules I think it is a requirement, while the law has been and I doubt if the substantive law has been changed in that respect, that the law alleged to be violated, that is, the section of the code, if it states an offense under any other section of the law it nevertheless is good.

But this indictment is returned under Section 145, which says that "any person required under this chapter to pay a tax * * * shall be guilty" in (a) and in (b) and in (c) it defines a person. "The term person as used in this section includes an officer or employee of a corporation or a member or employee of a partnership who as such officer, employee or member is under a duty to perform the act in respect to which the violation occurs."

Now it does not appear in the case of the indictment, if the defendant Himmelfarb was an officer or employee of the corporation or a member or employee of a partnership, or that he was as such employee or member under a duty to perform the act in respect to which the violation occurs. Now it seems to me that the question posed is whether or not that provision modifies Section 550 of the criminal code on the one hand, or if that is not a fact, in other words, it doesn't appear that there

is any corporation or partnership involved in this matter, or if that is not a fact, if it states an offense just as it is drawn. In other words, he might have aided and abetted or counseled or commanded the defendant Sam Ormont in any particular and he would still be a principal.

Mr. Katz: Yes, if the Court please, he might well be a principal if the indictment so alleged him to be. But where we have a situation in an indictment in a count such as this where we make reference specifically to a tax return filed by someone other than the defendant who was charged, in this case a tax return of someone other than the defendant Himmelfarb, and there is nothing within the terms of that that indicates how or in what manner or by what means the defendant Himmelfarb is in any way connected with a tax return of the defendant Ormont, or was required by any position he occupied or by anything that he undertook to do, to file a return or participate or to make the return or prepare it or cause it to be prepared, that we don't have facts that bring him within a relationship or in the position of a principal defendant.

I can understand that where we have an offense that may be committed by one or more persons they can all be charged as principals, but I don't believe that that is true with respect to a matter of this kind where you refer specifically to a tax return that an individual must prepare or file or have prepared or filed for him, that someone else, some stranger, unless he is connected up and shown to have some direct connection with that return, can be charged merely as a principal.

I don't believe that if in Count 1, if the Court please, if the defendant Sam Ormont's name was eliminated and the charge was merely that Phillip Himmelfarb attempted to do these things as charged, without any showing as to what the connection is on the part of the defendant Himmelfarb, or any legal requirement or legal duty or other requirement or duty on his part indicating any relationship, that it would state an offense.

The Court: I do not know. I think that was all raised by the motion to dismiss which was heretofore filed on behalf of the defendant Himmelfarb.

Mr. Strong: That is our position, your Honor, that it was all raised by that motion. It goes into detail for 19 pages, as to why these counts are no good.

The Court: Yes. I think it raises the same general proposition, and in view of the fact that that was denied by another judge of this court, I don't know which one, I think it becomes the law of the case and I am bound to follow it.

On the merits, however, were I to rule on it I would have to rule against you on the grounds that you have stated, and your objection to the introduction of that evidence.

Mr. Katz: If the Court please, with reference to both counts, both 1 and 2, I do want to call your attention to this fact, and preliminarily permit me to say that I understand that prior rulings of a court are the law of the case that are binding except such motions that may be made at any time from time to time and every time that they are

made that the court before whom it is made, such as a motion to dismiss, is one of those things that any ruling that has previously been made is not binding upon this court. If I thought that it had been I wouldn't make a motion and ask this Court to pass upon anything that was previously passed upon.

The Court: I think that you are bound to make your motion and preserve your record and you are bound to make it at every stage of the proceedings at which you can make it.

Mr. Katz: That is right, your Honor, and it is my thought though that the requirement that we make that motion is because the court before whom it is made at each stage has a right to determine it as that court views it.

So I make the motion, and I want to say this, that with reference with count 1 and 2 both, that both of those counts make the allegation with respect to the tax that is due and owing thereon in the past tense. In other words, the charging part of the indictment is "Upon said net income"—and I am reading now from count 2 and just by way of illustration—"upon which said net income he owed to the United States of America an income tax of \$5,843.91." It isn't that he owes it, it isn't alleged that he owes it, it isn't that it is due; it is alleged that he owed it, and they refer to a calendar year 1944.

Now it might be, and I believe that the cases support the proposition, that in a prosecution for attempting to evade income tax, in addition to show-

ing that there has actually been a willful attempt to evade it, it is incumbent that there be proved that there is a tax actually due and owing in a substantial amount—it can't be insignificant, in a substantial amount—over and above the amount that was paid.

The Court: Due and owing at the time the indictment was returned. If that were the case you would seldom have any income tax prosecutions because when the grand jury begins to breath on somebody's neck they usually come in and pay.

Mr. Katz: That may be, except this: this is the peculiar state of the situation that you have, if the Court please. It is alleged in both of these counts that the defendants owed for the year 1944, the amount owed in a tax over and above that which was reported and paid.

The Court: Excuse me just a moment. Go ahead.

Mr. Katz: Yes, your Honor.

The Court: I missed your last statement.

Mr. Katz: The statement is, in both counts 1 and 2 it is alleged that the money was owed for a calendar year 1944. Now we do have situations, and I think it will develop in this case, if the Court please, individuals may be on a calendar basis and they may be interested in partnerships or joint ventures which are on fiscal basis. On a calendar basis they report their income for the calendar year. On the fiscal basis they report their income from a partnership or joint venture the calendar year in which they receive that income which, under the law, is received in the calendar year in which the fiscal

year for the partnership or joint venture ends. So that in a situation such as we have here, where an allegation is made that there was a tax due and owing for 1944, and actually the taxpayer is in a position where he is interested in a partnership or joint venture, the fiscal period for which commences some time in 1944 and ends some time in 1945, and consequently under the law—and I don't believe there is any question about my understanding of it; at least the correctness of the rule as I understand it—that income is reportable irrespective of when it is actually received as of the end of the fiscal year when it is distributable and deemed distributable, even though it is not actually received by the taxpayer. Consequently that will be reported in the year 1945.

The Court: In which event the allegation would be that he owed the tax at whatever date the end of that fiscal year required instead of that he owed the tax.

Mr. Katz: The point I am trying to make, if the Court please, that if in the year 1945 a return is made based upon the understanding, whether correct or incorrect, that the fiscal year of the partnership being the year during which it is reported so that the income for 1944, the portion of 1944 and 1945 in that partnership from that joint venture is reported in 1945, we then have a situation where the taxpayer has actually paid all of the tax due and owing by him for the years 1944 and 1945.

Now it may well be that the government takes the position that the part received in 1944 should

have been paid in 1944; the part received in 1945 should have been paid in 1945, instead of it being treated as it was, as we think properly, a return for the entire period based upon that fiscal year.

But nevertheless we are entitled to know—and the facts that I state to the Court are stated to illustrate the position that we are in—we are entitled to know before we come in here to prepare our defense whether or not the government takes the position that there is tax due and owing over and above what actually has been paid, or whether they are taking the position that all the tax required to be paid has been paid. As a matter of fact, it may be that the facts will show, and I think they will, that there is an overpayment, but that it wasn't paid within the period that they believe under the law was required to be paid, although it was paid by the defendant Phillip Himmelfarb within a fiscal period in which he believed that it was reportable, returnable and paid.

The Court: I think that is a matter of defense. I think so far as the indictment is concerned, the allegation that upon which said net income he owed to the United States and the date is fixed previously—well, the date is not fixed there so it doesn't make any difference whether it is a fiscal year or calendar year—they just allege here that he committed fraud.

Mr. Strong: We have the date at the onset of the count.

The Court: On or about the 15th of March.

Mr. Strong: Yes.

The Court: And on that date they owed it. And if, for instance, the government were contending that it was a fiscal return ending at the end of May or the end of June, as many of them do, or the end of July, they would allege that on or about such and such a date, that is, the 30th of June or the 15th of July, whatever the date was. I think the indictment is sufficient in that respect. That, however, is a matter of defense. It may become apparent from the evidence of the case as it enfolds that that was the intention and understanding, in which event why a motion for a judgment of acquittal at the end of the case would permit the Court to take that into consideration.

Mr. Katz: It is quite obvious, I believe though, that from the nature of the allegations of counts 1 and 2 of the indictment, together with the bill of particulars, that a defendant is not advised and is not in a position to know what of many, many possible claims he may be called upon to defend against. That is one of the points I make, but that is one of the things that your Honor has said that has been ruled upon and your Honor isn't going to apparently change that. I do, however, make that motion.

Now I wish to make one other motion, if the Court please, and that is a motion to withdraw a juror and to declare a mistrial, and it is based upon this fact: Your Honor will recall that yesterday during the impanelment of the jury that Mr. Strong voluntarily and gratuitously made a reference to a pending OPA case. Your Honor, before

objection could be made, immediately instructed the panel that was being examined for purposes of selection and impanelment of the jury, that that had nothing to do with it, instructed them to disregard it, and made a full and fair instruction upon that point. That was done, as I say, if the Court please, without even the opportunity or necessity for any objection or protest on the part of counsel. Because your Honor did so immediately and quickly make that instruction, there wasn't anything to be gained at that point, if the Court please, other than to further increased the prejudice by making the objection which would have resulted in the instruction that your Honor previously had made, and a motion couldn't have possibly have been made to withdraw a juror and declare a mistrial because the jurors had then not been impaneled. I believe that any such motion as I now make in the absence of the jury, had it been made in the presence of the jury, would have tended only to emphasize and increase the prejudice resulting to the defendants.

Now I am familiar with the fact, your Honor, that in these types and kinds of cases where, of necessity, other offenses must be shown in order to prove the offense with which the defendant is charged, that such other offenses may be shown.

The Court: Similar offenses.

Mr. Katz: Similar offenses.

The Court: They must be similar.

Mr. Katz: Yes, your Honor. But those are not matters that can be gone into, in so far as the evidence necessarily brings that to light. That isn't the situation here, and even where such separate offenses may be shown, reference may not be made to any pending action or actions of a criminal nature against the defendants. Now that was done.

The Court: I think that is the rule. There isn't any doubt about it at all. I thought that I had cured the possible prejudice yesterday but I am not sure about it. It is a very rigorous and stringent rule and requires absolute obedience to avoid any prejudice.

Mr. Strong: Your Honor, I would have no objection to the calling of another panel. I don't want to injure the defendants by a statement which I didn't realize was improper when I made it. I will agree, if your Honor sees fit, to call another panel of jurors.

The Court: We can't get one this morning. Is there a panel around the court rooms?

The Clerk: I do not believe so.

The Court: Do you think we can get one by 2:00 o'clock?

The Clerk: No, your Honor.

The Court: I do not want to delay the trial, but I think you are right, counsel, on the matter of the possible prejudice here. The law is so strict and stringent in that regard, I mean only in cases wherein willfulness or a specific intent is an element of the crime is there permission then, and it is a restricted and limited one, to show similar prior offenses, but they must be completed offenses.

Mr. Strong: I may point out for your Honor's information that almost as soon as this case opens we intend to show that the money was received from OPA over-ceiling sales. That was the source of the funds in this case.

The Court: Is it your intention to show that they were over-ceiling sales or that they were just a source of money?

Mr. Strong: Side money payments in addition to the ceiling amount. But I said I would agree to another jury. I don't want to leave anything which might constitute an improper selection or reversible error after the case is finished. I would rather get it done with right now.

The Court: I will grant the motion to withdraw the jury and declare a mistrial, and continue the matter until 2:00 o'clock. I will hold that order a moment and see if there is a jury around some place. Can you conduct an exploratory expedition, Mr. Clerk?

The Clerk: Yes, your Honor.

The Court: May it be stipulated that the jury may be excused without being brought back to court?

Mr. Strong: So stipulated.

Mr. Katz: Yes, your Honor.

Mr. Robnett: We so stipulate.

The Court: Advise the jury, Mr. Bailiff, that they are excused until notified; that they are permanently excused from this case and excused until notified, and do not advise them any further.

Mr. Strong: May I ask this, your Honor: There are some witnesses here who are businessmen and

they are quite busy. I don't believe we will have a jury selected and start with the trial actually beyond possibly the first witness until tomorrow morning. Would it not be possible to have them all excused until tomorrow so that they can get back to their respective businesses?

The Court: The Clerk says that it is difficult to get the jurors by telephone and get them here by 2:00 o'clock. I think that in the long run time will be saved—I am sorry about it; I know that a lot of witnesses are here and the lawyers and everybody—the order will be then to continue all proceedings in these matters until tomorrow morning at 9:30 o'clock.

(Whereupon, at 10:55 o'clock a. m., an adjournment was taken until 9:30 o'clock a. m., May 23, 1947.)

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 13th day of June, A. D., 1947.

Official Reporter.

[Endorsed] Filed June 23, 1947.

In the District Court of the United States in and
for the Southern District of California, Central
Division.

Honorable Peirson M. Hall

Judge Presiding

No. 19094 Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAM ORMONT and PHILLIP HIMMELFARB,
doing business as ACME MEAT COMPANY,
Defendants.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Appearances:

For the Plaintiff: James M. Carter, United
States Attorney, Los Angeles 12, California; by
Alfred P. Chamie, Assistant United States Attor-
ney, Los Angeles 12, California.

For the Defendants: Daly B. Robnett, Esq., and
Benjamin F. Kosdon, Esq., 1007 Spring Arcade
Building, 541 South Spring Street, Los Angeles 13,
California.

Los Angeles, California, May 19, 1947
10 o'Clock A.M.

The Clerk: Your Honor, we have the matter of
United States vs. Sam Ormont and Phillip Him-
melfarb, doing business as Acme Meat Company,

motion for immunity and for order barring prosecution of defendant Sam Ormont and notice of an application by defendant Sam Ormont, and Sam Ormont doing business as Acme Meat Company, for leave of Court to file a complaint in action in the United States Emergency Court of Appeals against Phillip Fleming, Temporary Controls Administrator.

Mr. Chamie: Your Honor, Mr. Strong who is representing the Government is up in San Francisco before the Circuit Court of Appeals, and he asked me to inform the Court that he would be ready and available for the trial of the criminal matter which is set for the 21st of May.

The Court: There are two criminal matters. Is this the matter which is going to trial?

Mr. Chamie: The income tax case is the one that is going to trial.

The Court: This is a conspiracy and an Emergency Price Control case?

Mr. Chamie: The information I have is with relation to the income tax trial on the 21st.

The Court: There are two cases, are there not?

Mr. Robnett: There are two cases, your Honor, and this is on the Emergency Price Control Act which is to follow the other case. The other case is set for the 21st. This has really nothing to do with the other case.

The Court: Are you familiar with this is at all?

Mr. Chamie: Not at all.

The Court: Mr. Strong is?

Mr. Chamie: Yes.

The Court: Will he be ready to go to trial on the 21st, on Wednesday?

Mr. Chamie: He will be, your Honor.

The Court: When the matter was assigned to me by Judge Weinberger, I understood these motions—there were some motions in this and are there some motions in the Internal Revenue case too?

Mr. Robnett: There is none in that, your Honor.

The Court: That there were some motions set for today before Judge Weinberger and I made the suggestion, either to him or to Mr. Strong, that they be put over until tomorrow, in view of the fact that the income tax case is going to be tried first and that both cases are against the same defendants. Is that correct?

Mr. Robnett: That is correct.

Mr. Chamie: Yes.

The Court: I think I might defer any consideration of this until the conclusion of the Internal Revenue case.

Mr. Robnett: There is only one thing, your Honor, in one of these cases there is a motion for leave to bring suit against the present occupant of the position which we have to bring our suit before the Emergency Court of Appeals, Mr. Fleming. Our information is that we would need to file that suit before the 1st of June, if filed against him. Of course there might be a successor, but in any event that was our information, that the suit it it was filed before the 1st of June would be against that party and our motion is for that.

Now that would seriously affect our preparation in that case which follows this. We would not have much time to prepare, in fact we don't have any in between time after we try the one case if the other is to follow. I would like very much if we could get this disposed of before the trial of either case.

The Court: Has the Government filed any answering brief or memorandum here?

Mr. Chamie: I am not in any position to answer.

The Clerk: I have not received anything.

Mr. Robnett: They have not, your Honor.

The Court: Mr. Strong will return tomorrow?

Mr. Chamie: He will, sir.

The Court: Would it be a matter of too great inconvenience to you, Mr. Robnett, to return tomorrow afternoon at 2:00 o'clock.

Mr. Robnett: No, your Honor. We are agreeable to accommodating counsel, naturally.

The Court: In the meantime I can examine the file and examine your motions. I notice that you refer to several price regulations.

Mr. Robnett: Yes, sir.

The Court: I do not have them available.

Mr. Robnett: I think we may have all of them, at least all the amendments.

(The documents referred to were passed to the Court.)

The Court: You have quoted the pertinent portions of the regulations in your memorandum, have you?

Mr. Robnett: No, your Honor. I have not quoted the regulations as to prices at all, only referred to the fact that none of these regulations, up to a certain one which was in 1945 were ever approved by the Secretary of Agriculture, and neither the original nor those amendments. That is all set forth in an affidavit and we have as a background for that wired and found out that that was true from the Department itself.

The Court: And the basis of your objection, briefly stated, is that this concerns an agricultural commodity, to-wit, meat, and that under the terms of the price control law any regulation had to be approved by the Secretary of Agriculture.

Mr. Robnett: That is correct.

The Court: Which was not done?

Mr. Robnett: Well, we don't go quite so far as saying just meat, your Honor, that we claim that it pertains to everything this defendant was engaged in handling.

The Court: What was he engaged in handling?

Mr. Robnett: Beef carcasses and veal carcasses. There is a little difference between whether it is meat that is cut and whether they are carcasses.

The Court: You mean meat ceases to be meat at a certain point and becomes a vegetable?

Mr. Robnett: No. It may cease under this act to become a commodity.

The Court: An agricultural commodity?

Mr. Robnett: A processed commodity after they have cut it up. It is still meat, and of course we

contend that it remains an agricultural commodity until it is at least cut up. That is what he was dealing with, was carcasses.

The Court: I do not know as that would appear from the face of the indictment.

Mr. Robnett: Yes, your Honor.

The Court: It describes the sale of meat.

Mr. Robnett: If you will note Counts 2, 3 and 4.

The Court: Well, it says agree to sell certain meat items described by them as "1 B Beef."

Mr. Robnett: A whole beef, that is.

The Court: It doesn't say it is a whole beef.

Mr. Robnett: "1 B Beef" would be B quality beef, I take it.

In any event, your Honor, that is what was handled and that is what will be developed in the case.

The unfortunate feature is that there is only one court which they have allowed to determine that fact, and that is the Emergency Court of Appeals, as to whether that is an agricultural commodity or whether the regulations were duly adopted and approved, so that we are asking there merely for the permission to bring that suit to test that, and of course incidentally for an abatement of this indictment until that is determined.

The Court: Now you said you had copies of the regulations available that you could leave with me here?

Mr. Robnett: I can leave with you 169. I will say this, your Honor, that although we cite the others because they are cited in the indictment, they pertain to a different class of slaughtering, to hogs

and such as that that we did no slaughtering of, and I am sure there will be no evidence in the case, although they are set forth in the indictment. I do not have those with me but I do have 169, which is the one that pertains to this.

The Court: Is that a copy you can leave with me?

Mr. Robnett: Yes. And it covers all amendments up to May 25, 1945. Here is one to December 1945.

In December 1945 they did start approving the amendments. I will leave this with you.

(The documents referred to were passed to the Court.)

Mr. Robnett: The other motion, of course, is the motion for immunity on the ground that the defendant was compelled to testify before the grand jury.

The Court: In this case?

Mr. Robnett: In this same case.

The Court: That is supported by an affidavit?

Mr. Robnett: Yes, it is, your Honor.

The Court: Of whom—oh, yes.

Mr. Robnett: Pardon me. In connection with this other motion, I have one here showing approval by the Secretary of Agriculture just to show you how they did approve after they started approving.

The Court: This one is 169, August 30, 1946.

Mr. Robnett: All I was doing, your Honor, was just showing that those approvals are always put on when they are granted and the others that I have shown you are not, and do not have that on it. I

don't know whether I make myself clear there or not. Of course we have an affidavit that states that they were not approved.

The Court: Ordinarily in these matters—I have had several of them—I have granted I think one or more but I did so after the trial because at that time there could be no question about the facts upon which the Government was asserting a violation.

Here I notice the first count is a conspiracy count and it merely alleges that they will sell meat at prices in excess of these regulations. It doesn't describe the kind or type of meat, and the rule of course is that in construing an indictment recourse cannot be had to the subsequent counts for an explanation of what is contained in the first count. The Government is the one who usually comes in and asserts that. So in looking at the face of this I would just say offhand that there would be nothing before me which would show any doubt as to the conspiracy count, but what the kind of violation aimed at is that prohibited by the prescribed regulations. Do I make myself clear?

Mr. Robnett: I appreciate that.

The Court: If, however, upon the trial of the case it develops that the basis of the conspiracy count is whole carcasses of beef which, as you claim under the law must be approved by the Secretary of Agriculture, then possibly a situation would arise where I could certify the matter to the Emergency Court of Appeals who would then have before them the record and the facts. Now I do not see how the Emergency Court of Appeals, in looking at this

indictment, unless there was a stipulation from the Government that it did cover only whole carcasses of beef rather than any other type or kind of meat or whole carcasses of beef, whatever it is, unless there is a stipulation it doesn't seem to me that the Emergency Court of Appeals would be able to determine whether or not your point was good or bad because they cannot tell from reading the conspiracy count that it means whole carcasses of beef.

Mr. Robnett: Well, your Honor, I don't think they can determine on the indictment here because that would not be before them but they could determine whether or not as it applied to the things we claim the act was valid or invalid.

The Court: Yes, the indictment would have to be before them, they would have to have some—that would be the basis of the certification then.

Mr. Robnett: It isn't really a certification, it is only a permission, as I understand it, under the act that we have to get in order to bring the suit. But it would at least apply to the three or four separate counts and if we went to trial they are all before the jury and we might be in a position that we would be seriously injured because we had not invoked the jurisdiction of the court in raising that point, and that would jeopardize us.

The Court: Tomorrow afternoon at 2:00 o'clock if you will return, perhaps in the meantime I will be able to get hold of Mr. Strong when he returns tomorrow morning and see whether or not he would make a stipulation concerning the basis of the charge in Count 1.

Mr. Robnett: Very well, your Honor. That will be 2:00 o'clock tomorrow afternoon?

The Court: I will continue this until 2:00 o'clock tomorrow.

Mr. Robnett: Thank you. That is as to both motions?

The Court: As to both motions.

Los Angeles, California, May 20, 1947

10:00 o'Clock A.M.

The Court: Ex parte?

The Clerk: No ex parte, your Honor.

The Court: Very well. No. 19094, United States vs. Sam Ormont and Phillip Himmelfarb.

Mr. Robnett: Ready, your Honor.

The Court: Is Sam Ormont here?

The Defendant Ormont: Yes.

The Court: Phillip Himmelfarb?

The Defendant Himmelfarb: Yes.

Mr. Strong: I am here but I don't know whether I am ready. I would like to have the motion go on of course and if there is anything to be added, with your Honor's permission might I have, if you so desire additional matter, some time to get a memorandum up subsequently. But I have no writings of any kind in opposition because I haven't had time to prepare one. I do oppose the motions and possibly the argument will take care of everything necessary, but if not I will ask you Honor's indulgence to give me a little more time.

The Court: I have read the motion for immunity on behalf of Sam Ormont and it did not appear to me to be sufficient. There isn't anything that I can tell from what is before me now as to what questions he was asked or whether he was asked at all about the matter concerning which he was indicted. Was this the grand jury which indicted him?

Mr. Robnett: I understand so.

The Court: Or was it the previous grand jury?

Mr. Robnett: I understand it was the same grand jury. That is my understanding, your Honor.

The Court: Do you have the file here?

(The document referred to was passed to the Court.)

Mr. Strong: It was not the same grand jury and it is obvious that it could not be.

The Court: It does not appear to be. According to the affidavit he appeared in February 1946. That grand jury was discharged in September 1946 and the new grand jury impaneled in September, unless —can you state that it is not the same grand jury? Sometimes these grand juries are held over by a special order of the court.

Mr. Strong: They were two different grand juries, as far as I remember.

The Court: Then on the face of it your motion for immunity on that ground alone would have to be denied.

Mr. Robnett: Your Honor, may I make just one or two observations? I don't understand that ques-

tion of immunity would be whether it was the same grand jury or it was not the same grand jury; it would be based upon the proposition that when the Government called the defendant and compelled him to testify by subpœnaing him before the grand jury on a hearing and compelled him to give evidence in connection with the matters, the very matters which later he was indicted for, whether he was indicted on his testimony or not I don't think would make any difference. It would be a question that they had compelled him to give evidence on that subject matter and matters relating thereto and then afterwards indicting him. I think he is entitled to his immunity because he was compelled to give that evidence, not whether an indictment was based on that or not.

The Court: There is a possibility that that could be so but it doesn't appear from the files and records before me that it is so. In other words, it could be so if the testimony and evidence which he gave before a grand jury which died or expired by expiration of its term of office which was not used in any subsequent indictment, it would seem to me that he suffers no prejudice.

Mr. Robnett: Your Honor, I believe this is a fact—maybe counsel knows whether it is not—but I believe that that grand jury before whom he was called and so testified, that they were examining and going into the investigation regarding alleged violations of the OPA—I will refer to it as that—violations which they claimed the Southern California Meat Company and its officials had com-

mitted in connection with this event. I believe that grand jury rendered an indictment against this Southern California Meat Company, or some of its officials, or both, and that they have plead guilty in that matter. That evidence of the defendant was taken into account undoubtedly in that case. Therefore he was giving evidence in connection with a matter which afterwards they have indicted him on.

And if you will notice in the first count in this case there are many charges there of his alleged violation in connection with the Southern California Meat Company. Many of the overt acts pertain to the Southern California Meat Company.

The Court: That would compel me to draw an inference which I do not think I would be warranted in drawing from the state of the record before me. Now I know it is the custom and practice ordinarily not to have a stenographic reporter in the grand jury.

Mr. Robnett: Yes, I understand they did not have one.

The Court: And if they did not have one we do not have the benefit of a stenographic transcript of what questions were asked him.

Mr. Strong: That is wrong, your Honor. There was a reporter present.

The Court: In the grand jury?

Mr. Strong: There is not always, but in this case there was. A reporter was sworn in and he took stenographic notes.

The Court: In this case of Mr. Ormont's testimony?

Mr. Strong: Yes. But I don't think that we should be required to produce grand jury testimony unless they make a showing under oath.

I can state to your Honor that Mr. Ormont said nothing which tends to incriminate him, absolutely nothing, and therefore he has no immunity of any kind. He wasn't being investigated and it has nothing to do with him.

The Court: I appreciate the assurances of counsel, but as a judge, that is a conclusion that I must reach.

Mr. Strong: I have the transcript of the testimony of Sam Ormont, every question and every answer.

The Court: There would have to be that transcript of testimony, but even so I don't know that the grand jury, not having indicted him, I think if you have that transcript that the defendant is entitled to have it for purposes of his motion and submit the matter on that.

Mr. Robnett: Yes, your Honor. I did not know that they even had a reporter.

The Court: Do you have it?

Mr. Strong: No, I don't have it with me.

There is another question, unless your Honor orders me to give a copy to the defendant, I can't supply a copy. I only have the one copy. I can supply it to your Honor.

The Court: I understand under the new rules it can be furnished upon the order of the judge.

Mr. Strong: Yes. I just have the one copy and we don't really have facilities for making copies.

The Court: If you can submit that copy to me, I will let the motion stand submitted upon that, the motion for immunity.

Mr. Strong: Yes.

Mr. Robnett: Thank you. But I would like to also call your Honor's attention to the Armour case recently decided, and which I have cited, that in that case it was shown specifically that the defendants did not give any incriminating testimony, they gave testimony the other way, they denied any and all violations, nevertheless the Court there held they were entitled to immunity, that it didn't make any difference what their answers were, whether they incriminated them or didn't, the fact that the Government sought to inquire of them and that their answers might incriminate them seemed to be sufficient cause.

I just cite that to your Honor.

The Court: That is cited in your memorandum?

Mr. Robnett: Yes.

Mr. Strong: We will submit a memorandum, your Honor, of case to the contrary.

The Court: I do not remember the case, but I remember the old rule which I ran into as a district attorney myself—of course I never had this situation arise because where there was any possibility of a defendant being indicted I always had him sign a waiver of immunity.

Mr. Strong: They wouldn't do it.

The Court: Otherwise the rule is generally that the man must claim his rights at the time, and I think it even goes so far in some cases that he must claim it as to each question.

Mr. Robnett: There are many acts that do require that he must claim it, and in the Armour case they did claim it, I will say that. They had counsel and they did claim it.

There are cases though that intimate to the contrary, where the defendant, as in the case of this instance, was not familiar with the law, did not know his rights, thought he had to obey the subpoena and give testimony and had no legal advice on the subject. I have quoted from one case where they say, "Many know their rights and many do not." The Armour case is cited on the last page of my authorities, your Honor. It is in 64 F. Supp. 855.

That case came up directly on that proposition, but their evidence, as I say——

The Court: Do you make nay point of the subpoena issued to him by the OPA?

Mr. Robnett: Yes, your Honor, I make a point on that as well as the one before the grand jury there he furnished books and records under subpoena.

The Court: To the OPA?

Mr. Robnett: To the OPA; yes.

Mr. Strong: But not to me.

The Court: Well, the act specifically provides for immunity there.

Mr. Strong: I don't know what books he furnished. I have never seen them nor do I know what they are.

The Court: That does not make any difference. What page is that in your memorandum?

Mr. Robnett: That is at the foot of the third page and then on over to the fourth page. That was a subpoena duces tecum, and we have set it forth in which they required him to submit those different books, general ledger, journal, invoices of sales, subsidy applications, reports, sales register, cash register, bank records, and so forth.

Mr. Strong: I just want to point out to your Honor that records kept pursuant to the Emergency Price Control Act have been held time and again to be quasi-public records and there is no privilege attaching to them. The section deals with testifying, as I recall it, before one of the administrative officers, and there is also a necessity, I believe, for claiming immunity. Simple production of records which are quasi-public records provide no immunity whatsoever.

The Court: That seemed to be the notion as to what the Glick case held, but the Circuit Court of Appeals of the Ninth Circuit recently modified the Glick case in the Freeman case. The distinction which they made in the Freeman case, if that is the name of it, was that in the Glick case he voluntarily surrendered his records without subpoena and therefore he could claim no immunity.

Mr. Strong: But the entire law dealing with quasi-public records would have no effect if they were in each instance held to be public property because they were voluntarily surrendered, because even personal records, private papers, which are voluntarily surrendered do not give the voluntary surrender any immunity.

The Court: That is correct, but the point is that he did not voluntarily surrender his records, that whatever the defendant in this case appeared with he appeared with under compulsion of a subpoena which said at the end, in capital letters and black ink, as I remember, "Fail not at your peril."

The case of Freeman vs. United States, 160 F (2d) 72 distinguishes the Glick case and held that the records, while quasi-public, may be had only by consent for the purposes of a criminal prosecution.

Mr. Strong: I assume I have permission to submit a memorandum within a short time?

The Court: You mean by 3:00 o'clock?

Mr. Strong: Commensurate with the disability of our secretarial services; say by next Monday.

The Court: On the matter of immunity, do you recall that section in the act?

Mr. Robnett: No, I do not.

Mr. Strong: I have the act here:

"No person shall be excused from complying with any orders under this section because of its privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 1, 1893, United States Code 49, Section 46, shall apply with respect to any individual who specifically claims such privilege."

And that of course is the Federal Communications or Federal Trade Compulsory Testimony Act, I believe.

The Court: What section is that?

Mr. Strong: That is Section 922 (g). It is on page 361 of the United States Code Appendage.

The Court: What is the immunity statute they refer to?

Mr. Strong: That is in 49 U. S. C., Section 46.

The Court: This act will apply with respect to any individual who specifically claims such privilege, and there is no showing here that he did claim the privilege.

Mr. Robnett: No, your Honor, we have not made that showing. We made the showing that he didn't know his right to claim it.

The Court: Sometimes it seems like kind of a harsh rule, but it is the rule that that is lost because he did not claim it. He is presumed to know the law.

On the matter of the motion for immunity, that will be submitted upon the receipt of the transcript, if you can send it down this afternoon.

Mr. Strong: This afternoon?

The Court: Yes, just the transcript.

Mr. Strong: It comes together with a lot of other testimony. If your Honor is going to read it alone I will leave it together but if your Honor intends to give a copy to the defendant——

The Court: No, I will just read it myself.

Mr. Strong: Yes, sir.

The Court: On the other motion, that is, your motion for leave to file a suit in the Emergency Court of Appeals, I again looked at the indictment and read your brief and your memorandum, but the difficulty, as I pointed out the other day, I have to

judge what the facts are by what the indictment says they are. Now while it may be true about your grades of beef as to the separate counts, the first count says nothing about it, and there is nothing from which I can say that the meat which is described there, and it is only meat, is meat which it is, sides of beef—

Mr. Robnett: Sides and carcasses.

The Court: Now if the United States Attorney is willing to stipulate that the sales of meat described in the first count consisted only of sales of sides and carcasses of beef, or whatever it is—

Mr. Robnett: Beef and veal.

The Court: —beef and veal, then I would have the question properly before me, and in a way upon which I could make a decision upon your motion. But as it is now, I do not.

Are you willing to make that stipulation?

Mr. Strong: I can't at this point, because as a matter of fact I don't know myself. But beyond that, I wasn't here yesterday, your Honor, and I don't know what difference it makes whether it is or it isn't. This man describes himself as a slaughterer in his sworn motion before the Court, but he also has filed a sworn income tax return.

The Court: I haven't got it.

Mr. Strong: But he knows the facts.

The Court: I know, but it isn't what he knows, it is what I know.

Mr. Strong: If there is that point, and if there is any further question arising, I would like some time to set this forth in my reply.

The Court: His point is, as he makes it here in the memorandum—I don't know whether you have had time to examine it or not—his point is that type of commodity in which he was engaged in selling was the type of commodity which arbitrarily, for the purposes of the Emergency Price Control Act, was described as an agricultural commodity requiring the approval of the Secretary of Agriculture of all maximum price regulations concerning their sale.

Mr. Strong: Is there any contention that there is no such approval?

The Court: Yes, he said there never was any approval of any of the regulations until a certain date which he has set forth here, and that all of the prior regulations, maximum price regulations, regulating the sale of the price of sides and carcasses were not approved by the Secretary of Agriculture, and that it is conceded by the Office of Price Administration that that is so, and he has submitted Regulation 169 as of December 27, 1945 to show that it was not approved, and Regulation 169 approved August 30, 1946 to show the method of approval.

Mr. Robnett: That is correct.

The Court: Another thing, I do not know in that connection, counsel, whether or not it is within the period.

Mr. Strong: That is another point. It is not. It is within 30 days after arraignment or five days after judgment.

The Court: No, I mean within the period, the sales were within the period where the regulations

were not approved. These are dated April 1945, the 23d of April, 1945, the 4th of January, 1946, the 13th of February, 1945, and the conspiracy to and including June 30, 1946.

Mr. Robnett: Yes, but the overt acts, as you will observe, nearly every one of them is in 1945 long prior to the time when they started approving.

The Court: That I cannot go by. While it is true in a conspiracy case you must allege an overt act, the gravamen of the charge is contained in the conspiracy allegation, which is that on or about the 1st of May, 1944 and continuously thereafter to and including June 30, 1946. They might have done several overt acts before that and still conspired subsequently.

Mr. Robnett: Exactly so, but if I understand the rule correctly—I know in the state courts it is; I think it is here—that they must prove one at least of the overt acts they have alleged.

The Court: Yes.

Mr. Robnett: And there isn't one of them that is alleged, as I understand it, in 1946. They are all in 1944 or 1945.

The Court: That would not make any difference so far as the conspiracy is concerned. In other words, if the allegation of the conspiracy extended to a period of time when the regulation was approved by the Secretary of Agriculture, then your point would not be good. It might be if they did not you might have a failure of proof sufficient to support a motion for a judgment of acquittal after the Government's case in the other event, but I would not be able to grant any motion that you

have requested here on the face of the indictment.

Mr. Robnett: Well, all right. As to all the items, that would be before the first approval which I have submitted to your Honor.

The Court: Which is the first approval now?

Mr. Robnett. The first approval of Regulation 169 was August 3, 1945. Now that approval is only an approval of an amendment and 169 itself was never approved. So if we tried the validity of that and the Court determined that 169 in and of itself and all amendments up to August 3, 1945 was invalid, it would then mean that none of the evidence could go in even under the conspiracy item which would tend to show any violation.

The Court: It is not a question of the evidence going in now, it is a question of whether or not I can tell from the face of this indictment that you have a point which might be well taken. In other words, can I tell from the face of this indictment that it was the kind of meat and from the face of the indictment and the approval of the regulations, does it cover a portion of the period alleged in the conspiracy?

Mr. Robnett: It does cover a portion of the period at least, your Honor, and it covers all of the overt acts as to the times that are alleged.

Mr. Strong: I might say I am not participating much in this discussion because I am not acquainted with the administrative necessity for the Secretary of Agriculture's precise action, and I assume that if there is any question in your Honor's mind that I would have the opportunity of submitting a memorandum.

The Court: There is a provision in the act which requires the Secretary of Agriculture's approval on any agricultural commodity, and the cases hold that an agricultural commodity is not that which we ordinarily consider to be an agricultural commodity but those which arbitrarily have been established to be an agricultural commodity for the purpose of law.

Mr. Robnett: Now, your Honor, at least as to Counts 2, 3 and 5, as the indictment reads, this motion—I mean this particular Regulation 169 and the amendments would apply, because those are shown to be in April and February of 1945.

The Court: Yes, that is correct, but I do not think that it would be wise or just for me to give you permission to file suit on part of an indictment. If you are entitled to file the suit and part of it might be good and part of it might not be, then if it eventuates in a conviction, I at that time still have jurisdiction to permit you to take either all or a portion of it to the Emergency Court of Appeals.

Mr. Robnett: Well, possibly you are correct in that.

The Court: I cannot see how I can go along with you on your conspiracy count. On the others I can see your point.

Mr. Robnett: The only thing is this, your Honor, there is a case holding that they were not allowed to do something, that is, to raise the point because it said they had never invoked their right to have it tested before the trial in the Emergency Court of Appeals. We are seeking to get away

from that case by invoking that right and that privilege and asking for mere authority to sue.

The Court: If you are granted authority then these proceedings are stayed.

Mr. Robnett: They should be stayed until that is determined.

The Court: What is that section?

Mr. Strong: 924(d). It is right at the bottom, where it says "within 30 days after arraignment."

The Court: I have the act here which has a different number.

What did you set forth here as your reasonable and substantial excuse for not presenting this in a protest to the administrator in accordance with Section 203 of the Act?

Mr. Robnett: The only thing we set forth here is that it was not until the decision of the Suwanee Fruit & Steamship Company case that we were familiar with the rights to contest the validity on the ground that the agricultural commissioner had not signed. We have never filed any protest against the act itself and we didn't come in here with a motion sooner because of the fact that that Suwanee case just came down on April 9th of this year.

Then there is the case of Utah Junk Company vs. Porter, Price Administrator, which was decided February 26, 1946. We have the advance edition here in Volume 328 U. S. No. 1 at page 39, in which it said that such a protest could be filed at any time.

Mr. Strong: Within the Court's discretion.

The Court: A protest to the Administrator?

Mr. Robnett: Yes, your Honor.

The Court: But you did not file a protest?

Mr. Robnett: Not yet, but we intend now to file this other proceeding, which would be in the nature of a protest, and pass on the validity.

I do not think in the Suwanee case, as I recall it, that there had ever been any protest filed. There they brought a suit.

The Court: I do not have the Suwanee case.

Mr. Robnett: I think we have it here.

The Court: Is it in the advance sheets?

Mr. Robnett: Yes, your Honor. I can give you my copy of the decision.

Mr. Strong: Is that the only copy you have?

Mr. Robnett: That is all we have; yes.

(The volume referred to was passed to the Court.)

Mr. Robnett: Your Honor, I wish also to call your attention to the case of Ben H. Rosenthal & Company vs. Porter—they are companion cases—and in these cases it shows that they come under this very Regulation 169 and they filed those cases, or they initiated them in that court by filing a complaint pursuant to leave granted by the United States District Court of the Northern District of Texas. In that court criminal proceedings are pending charging the present complainants with illegal sale of beef carcasses at prices in excess of the maximum regulations.

That case, after decision by the Circuit Court of Appeals, has now been certified to the United States Supreme Court and certiorari granted, so it is there pending.

There you will see they obtained leave of the court in a criminal case such as this to do the very thing we are asking the privilege to do. This is a very recent case. I believe the date was November 26, 1946.

The Court: I think it is a matter of discretion of the court, that is, the trial court, as to whether or not it should be granted. But I know it would be an abuse of discretion of the trial court if I were to grant it on the facts set forth in this indictment. I do not even have an affidavit from either one of the defendants that that is what they sold and that they didn't sell anything else, and what the Government charges them with here in the conspiracy to sell meat.

Now certainly not all the meat covered by Regulation 169 is to be regarded as an agricultural commodity under the terms of the arbitrary standard set forth in that provision.

Mr. Robnett: The application here is a verified application by the defendant Sam Ormont in which he sets forth the only meat they had. They did have veal and beef carcasses. That stands undenied.

The Court: Let me see. That is Sam Ormont's affidavit?

Mr. Robnett: That is the application itself. This application was drawn as a verified application and you will find the verification on page 6.

The Court: Where is that paragraph?

Mr. Robnett: If your Honor will go back into it, on page 3 at lines 2 and 3, it alleges that the busi-

ness engaged in is a slaughterer of livestock, consisting solely of cattle and calves.

The Court: Certified as a non-processing slaughterer.

Mr. Robnett: Yes. And on lines 6 and 7 it states "during said entire period, said applicant sold only beef and veal carcasses, and did not sell any wholesale cuts." That had escaped my attention. So it is a verified fact before your Honor.

I cannot see the harm that results in allowing us to file suit, even though there is some delay, because if we do not succeed in that suit the sooner they can proceed with the trial of this action. If they do succeed to make it broad enough to cover all the regulations, if we do succeed in holding that those regulations are null and void and were ab initio, as they did in the Suwanee case, then the Government has no case whatsoever.

Mr. Strong: They can do that after judgment, if it is true. I haven't had a chance to look into it and I don't know where the Suwanee case is from.

The Court: Suwanee Fruit and Steamship Company vs. Fleming, United States Emergency Court of Appeals, decided April 9, 1947.

Mr. Strong: Thank you, your Honor.

The Court: I do not think that would be in the advance sheets yet. However, it may be.

The thing that is in my mind, Mr. Strong, is that on his showing here, his verified showing—and you are going to file some telegrams or letters. were you not, from the OPA, or something?

Mr. Robnett: I could file them. I merely mentioned that we have had it verified and had the oath taken as to which ones had not been approved and which ones had been.

The Court: Very well. In view of that, as to those he would be entitled to file a suit. The question in my mind was whether or not on the conspiracy count he would be entitled to file a suit. That turns on two questions, first whether or not the meat charged there is solely beef carcasses and not wholesale cuts, that is to say, those kind of merchandise which are described as agricultural commodities rather than those which are not and which may be regulated without prior approval of the Secretary of Agriculture. In view of the defendant's affidavit and showing under oath that that is the only thing in which he dealt, or in which they dealt, it seems to me that they have made a sufficient showing to overcome that difficulty in connection with the conspiracy charge.

The next thought in my mind is whether or not, in view of the fact that the indictment alleges a conspiracy up to June 1946, which latter date is subsequent to the date of certain amendments being approved, the defendant would be entitled under any consideration to permission to file such a suit. His position is that they only approved amendments.

Mr. Robnett: That is correct.

The Court: That would take away from this court, by virtue of that, the jurisdiction and power to determine at the time of the trial if the amend-

ments were valid or the basic regulation was valid and applicable to this defendant.

It would also seem to me, in view of the allegation of the conspiracy beginning at that period of time, that if the major portion of that time, if there was no valid regulation, that it might well be that the Emergency Court of Appeals, if they held the regulation void, as a result of that hearing that the indictment wouldn't state an offense.

I am inclined to think, Mr. Strong, that they have the permission to file the suit in the Emergency Court of Appeals.

Mr. Strong: I would like 10 days to answer.

The Court: I cannot give you 10 days. They are both set for trial tomorrow.

Mr. Strong: We can't try both tomorrow.

The Court: We can try one.

Mr. Strong: We can take the OPA case off calendar until I answer it, because this is an important matter.

The Court: It is important. We will let the Emergency Court of Appeals decide it.

Mr. Strong: Maybe the facts aren't accurate. I may challenge them and your Honor may have to hold a hearing to determine what the facts are. Possibly there are regulations where there is a signature of the Secretary of Agriculture and maybe it isn't even necessary. I would like to have an opportunity to be heard on that. I cannot conceive that all of these regulations at the time that this act was passed, after so many years of attempting to enforce them, that the regulations aren't valid

on their face is as simple as counsel states it. I would like to look into it before your Honor refers us to the Emergency Court of Appeals.

The Court: The Emergency Court of Appeals held they were invalid in the Suwanee case.

Mr. Strong: May I have until Monday? I will be in trial beginning tomorrow, so even that is not much time.

The Court: The general idea is that these things ought to be disposed of promptly. I cannot see what harm can come if I grant permission to the defendants to file the suit. It looks to me like a reasonable question in view of the Suwanee holding. The defendant is not merely proffering something here for purposes of delay, but it looks as though he may have a question that might be a well taken question. If I can grant him permission, he has to go to the Emergency Court of Appeals and practically get their permission to file a suit, and if they say no, why then he is back here. If they hold that the regulation is good then you can still try your criminal case, and if you try the criminal case and then they went up and it was held that it was bad you would have wasted a lot of your time, a great deal of valuable and diligent work and effort which you could spend usefully on other things.

Mr. Strong: Let us assume that I can show you by Monday that it should not go to the Emergency Court of Appeals.

The Court: It would seem to me that in the long run the matter would be disposed of better if I grant the request. The only question that I am con-

cerned about, counsel has filed his verified petition and has stated that he bases his verification as to that upon information received from the Office of Price Administration, or some office here.

Mr. Robnett: From the Department of Agriculture.

Mr. Kosdon: From the clerk's office of the United States Emergency Court of Appeals.

The Court: If you can furnish me any information—what date is Monday?

Mr. Strong: You see, I don't have the advantage of those telegrams. I have to start getting them now.

The Court: I think you would probably do that by Friday, Mr. Strong. The only question I am interested in is whether or not the Secretary of Agriculture did or did not approve any of these on or about—what date was it? You can have the whole history of his approval of these various regulations and you can have that by Friday, I am sure, by the use of the teletype.

Mr. Strong: I will try.

The Court: So I will continue this matter until tomorrow morning—we will all be here anyway—and thereafter continue it from day to day until Friday.

The motion for immunity will be submitted and as soon as Mr. Strong gets a chance he will send down the transcript with Mr. Ormont's testimony. That motion is, I note, made only on behalf of Ormont and not on behalf of Himmelfarb.

Mr. Robnett: That is correct.

Los Angeles, California, May 26, 1947
10 o'Clock A.M.

The Court: Ex parte?

Mr. Strong: As to the motion on Case 19094, I am not prepared as yet. I notice it was put at the end of the calendar. I wonder if it could be put over until tomorrow. We have a telegram from Washington saying they haven't been able to get the material together.

The Court: Counsel are entitled to a ruling on it in sufficient time to file a complaint before the 1st of June.

Mr. Strong: I will agree to have the trial put over so that they will have sufficient time to get their material together.

The Court: It is not a question of getting the trial put over, it is a question of getting their complaint filed in the Emergency Court of Appeals before that date. In other words, I have to act on their motion now.

Mr. Strong: Of course I can argue just on the amendment. I think on its face it shows there is no ground for going to the Emergency Court of Appeals. But we were looking for further details to assist your Honor in reaching a conclusion.

The Court: I will hold it until I get it on the calendar.

* * * * *

The Court: Mr. Strong, when can you be ready in this other matter? On the present state of the record it would seem to me that I would have to grant the petition to file a suit in the Emergency Court of Appeals.

Mr. Strong: Except with this possibility, if your Honor will take a few minutes to examine the statute as it was originally enacted and as it was amended, I think you will see on the face of the statute that the Secretary of Agriculture's approval doesn't come into play until July 1, 1945. And I have references to the Federal Register now which will show that on and after July 1, 1945 he approved everything he had to approve.

If your Honor is not convinced that the language in the amendment which I say is the language which brings in the Secretary of Agriculture with reference to these particular defendants, that it does do so, then what I am getting now is more authority to show that that language covers cattle, and as to that I have a telegram from the Assistant Attorney General dated the 23rd which says it is impossible to obtain all information desired today. Will advise you later. I assume he means today or tomorrow by "later."

But here is the language that I want to point to, your Honor, and I think this is very important——

The Court: They served me with a brief five days after the brief was argued before the Supreme Court where I was a party defendant, so I do not know what they mean by "later."

Mr. Strong: The language which brings the Secretary of Agriculture's approval into this matter is that contained in the amendment which went into effect as of July 1, 1945, and the language is:

"Feed product, processed or manufactured in whole or as a substantial part from any agricultural commodity."

Now that language is the language that brings in livestock and cattle. That gets into the statute for the first time as of June 3, 1945. Subsequent to that date all of the necessary changes in amendment were signed by the Secretary of Agriculture.

The Court: What section of the act as originally enacted?

Mr. Strong: It is 903(e).

The Court: That is the code?

Mr. Strong: That is 18 U. S. C.; yes.

The Court: Is that 3 or 5?

Mr. Strong: I guess it is 203. Maybe it is 3. I have the code without the other numbers.

Mr. Kosdon: I believe that comes in under Title 50 and appendix.

The Court: I have the act here and it indicates in the text of the act by footnote each sentence and clause that was added and the date of its addition, so if you have the section I can find it.

Mr. Kosdon: 903(e), Section 3.

The Court: It is Section 103 of the act.

The act as originally amended provided:

“Notwithstanding any other provision of this or any other law, no action shall be taken under this act by the Administrator or any other person with respect to any agricultural commodity without the prior approval of the Secretary of Agriculture.”

In 1945 the language, with respect to any agricultural commodity without the prior approval of the Secretary of Agriculture” was changed to read

"without prior written approval of the Secretary of Agriculture with respect to any agricultural commodity or with respect to any regulation, order or price schedule or other requirement applicable to any processors with respect to any food or feed product processed or manufactured in whole or a substantial part from any agricultural commodity."

Mr. Strong: That is the point.

The Court: That was the change. In other words, under the original act the agricultural commodity was not cattle.

Mr. Strong: No, and it became that by virtue of the language, "applicable to any processor with respect to any food or feed products processed or manufactured in whole or in substantial part from any agricultural commodity." That is where the cattle come in.

And the thing, your Honor, that I have asked the Department of Justice to supply are the hearings and the reports before the various branches of Congress, so if your Honor has any doubt as to the fact that this language that I have read means cattle, I want to bring further expositions by the various senators and representatives.

The Court: The difficulty is that the power is taken away from me to determine that. In other words, if it becomes a matter of construction I have no power to construe it.

Mr. Strong: Unless the language of the adopters of the amendment is so clear that there isn't any question.

The Court: It might be very clear to me but I might reach one conclusion which the Emergency Court of Appeals might say was very clear to them but exactly the opposite, and they have the power to decide that and I do not. In other words, if it is a matter of construction of this statute or of the regulation that is issued under it, I just do not have any power to construe it.

Mr. Strong: That would apply to almost every word of the statute or regulation if it were doubtful.

The Court: If the question is raised.

Mr. Strong: Well, that is exactly what I am trying to get, your Honor.

The Court: As to the validity of it. In other words, like in the recent cases I issued it there because somebody raised the question of what was meant by "rent," whether or not Mr. Auerbach's collection of what he termed a service charge was rent. So I think here that in view, as I say, of the present state of record, I will have to grant this motion. There is no substantial harm that can come to the Government by virtue of it.

Mr. Strong: May I state for the record what it is that I am trying to get so that there won't be any question about it?

The Court: All right.

Mr. Strong: What I am trying to get is reports of the various hearings held before the different branches of the Congress and their committees and subcommittees in discussing this particular amendment which was subsequently enacted as was read.

to show that by the words "the product" and the various other words, this change which your Honor indicated meant cattle.

The Court: Your position is that they enlarged "agricultural commodities" to include cattle by the amendment and it was not included originally?

Mr. Strong: That is right.

The Court: I think I understand your position.

Mr. Strong: And further that subsequent to June 30, 1945 every amendment to every one of the maximum price orders, revised maximum price orders, and other documents involved in this case that were issued by the Office of Price Administration were approved in writing by the Secretary of Agriculture, and I have the references to the Federal Register, which I assume your Honor doesn't want in view of your intended ruling. But they were all approved, every amendment was approved, subsequent to June 30, 1945.

The Court: The motion for permission to file suit in the Emergency Court of Appeals is granted in Case 19094 to the defendants named.

The motion for dismissal—

Mr. Kosdon: If the Court please, before you rule on the motion for immunity, I would like to give several additional citations.

Mr. Strong: Just a moment. I haven't supplied them with the transcript yet. I don't think your Honor would want to rule on it until then.

The Court: The motion for immunity of the defendant Ormont will go off calendar to be reset upon disposition of the case by the Emergency Court of Appeals.

Mr. Robnett: Will there be an order of abatement for this particular criminal case pending that matter?

The Court: The statutory order of abatement pending the determination by the Emergency Court of Appeals is likewise granted.

Mr. Strong: I understand that they must perfect their complaint and appeal within a certain number of days.

The Court: That is up to them. All I am doing this morning is granting their motion.

Mr. Robnett: Should I prepare a written order, your Honor?

The Court: I think probably there should be a written order.

Mr. Robnett: Very well. We will prepare one.

Mr. Strong: May I ask this, if your Honor doesn't mind: I assume, in view of your Honor's ruling, there is really no point to the Attorney General's office getting the materials together because, as I gather, regardless of what those hearings will show your Honor still considers that a matter of construction to be determined by the Emergency Court of Appeals?

The Court: Yes. However, I think the Attorney General's office will probably want to get it ready to respond to their suit because they say they are going to file a suit.

Mr. Strong: As I understand, it won't make any difference as to what comes up here because it would then be a matter of construing the statute, which your Honor feels the Emergency Court of Appeals should do.

The Court: I think the Emergency Court of Appeals has the jurisdiction and I do not. There should be a recitation in the order that the objection is made in good faith and that there is reasonable and substantial excuse for the defendants' failure to present such objection in a protest, and so forth. In other words, you have to conform to the statutory language.

Mr. Robnett: Yes, your Honor.

The Court: Very well.

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 31st day of July, A. D., 1947.

/s/ AGNAR WAHLBERG,
Official Reporter.

[Endorsed]: Filed Aug. 1, 1947.

In the District Court of the United States in and
for the Southern District of California,
Central Division.

Honorable Peirson M. Hall, Judge Presiding
No. 19138, Criminal

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAM ORMONT and PHILLIP HIMMELFARB,
Defendants.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Appearances:

For the Plaintiff: James M. Carter, United States Attorney, Los Angeles 12, California; by William Strong, Assistant United States Attorney.

For the Defendant, Ormont: Daly B. Robnett, Esq., 1007 Spring Arcade Building, Los Angeles 13, California; and Benjamin F. Kosdon, Esq., 1007 Spring Arcade Building, Los Angeles 13, California.

For the Defendant, Himmelfarb: William Katz, Esq., 415 Chester Williams Building, Los Angeles 13, California. [2*]

Los Angeles, California, May 23, 1947
9:30 o'Clock A. M.

(The following proceedings were had in chambers, Court, counsel and defendants present:)

Mr. Robnett: Your Honor, I do not want to

* Page numbering appearing at top of page of Reporter's certified Transcript of Record.

make this motion or make any statements concerning it while there is a prospective jury present. That is why I asked to come in here at this time.

At this time, on behalf of the defendant Sam Ormont, I wish to make a motion to dismiss—I believe that covers that now—and to enter a plea of once in jeopardy, based upon the record in this case before your Honor, the minutes in this case, showing that a jury was duly impaneled and sworn to try the defendant and has since been discharged, and that the impaneling and swearing of that jury to try him constituted jeopardy. Therefore I move to dismiss as to him on the ground that he has been once in jeopardy.

I do not know whether it would be proper to let him enter the plea of once in jeopardy or not. I believe under your new rules a motion to dismiss covers it.

The Court: I think so. Do you want to join in the motion?

Mr. Katz: I do not, your Honor. In that connection, I think I owe the obligation of this court to say that I do not feel I should join in that motion on behalf of the defendant [5] Himmelfarb. I made the motion to your honor in good faith and I requested the ruling that your Honor made.

The Court: I understood it was joined in by both defendants.

Mr. Strong: That is what the record shows, your Honor.

Mr. Robnett: If that is the understanding of your Honor, I know you acted under that understanding then, but I did not understand that we

joined in any motion. It was not my intention. However, I did not state anything to the contrary. I was ready to make some other motions and had my authorities there. I thought our original stipulation—maybe you did think it covered it—but my understanding of the stipulation was that it was to apply during the trial to objections to questions pertaining to evidence. But if it is your understanding that it applied also to motions of this character that was made by Mr. Katz in behalf of his client, then of course I do not want to take the position——

The Court: The motion of course went to the heart of the case of both defendants.

Mr. Robnett: Exactly so, although I did not intend to make that specific motion. If your Honor feels that that was the stipulation, I know you acted accordingly then.

The Court: I was under the impression that the motion was made on behalf of both defendants. Even so, in considering the matter on the merits, I do not think the motion for a [6] once in jeopardy plea is well taken. While the jury was sworn, there was not even a witness sworn, no opening statement to the jury, and there was nothing that the jury could decide it on. There was no evidence, no presentation of any kind, and I think there has to be more than the mere swearing of a jury to place a defendant once in jeopardy. The motion will be denied.

Mr. Robnett: Very well.

The Court: Do you have some other motions you wish to make out of the presence of the jury?

Mr. Katz: Before we go into any other matters, I am in an awkward position, I feel. I want to make this explanation to the Court. I made the statement to your Honor and I made that motion in good faith. I don't make motions or ask for rulings to lead the Court into error. It was my understanding at the time that your Honor expressed it that in making the motions that unless it was specifically declared otherwise it applied to both defendants.

On this matter of the motion coming up, there was never any contention that it be otherwise, and I want your Honor to know it, and that that has been my position. I am somewhat caught by surprise in so far as this motion is concerned.

The Court: I do not think anybody need to feel awkward about it. Mr. Robnett owes the duty to his client to make a motion if he thinks that under the law he is entitled to make [7] it.

Mr. Robnett: Precisely.

The Court: It isn't my lawsuit. People do not try lawsuits to please me. It is your day in court.

Mr. Robnett: That is right, your Honor.

The Court: Do you have any other motions to make out of the presence of the jury, either of you?

Mr. Robnett: We have not received the transcript of the testimony of our defendant before the grand jury, which I understood was to be written up for us.

Mr. Strong: It takes a little time, your Honor.

Mr. Robnett: Yes, I realize it does. I didn't know how long it was.

I wouldn't have any motion until I see that, your Honor. I couldn't tell whether I have any or not until then.

Mr. Strong: That refers to another case, your Honor. I would like the record to show that.

The Court: That is the transcript that I referred to yesterday, I understand.

Mr. Robnett: Yes.

The Court: Well, your motion for a dismissal now on the ground that the defendant Sam Ormont was called to testify against himself in the indictment as based on that, that is, as to the OPA case—

Mr. Robnett: Yes. [8]

The Court: You are not making that motion in this case?

Mr. Robnett: I expect I will want to make it when I see the evidence, but I would like to see the evidence so that I could make it if I feel that it would have any application in this case. I do believe that it probably did have since I heard counsel say that there were bills of lading or some invoices or something.

The Court: Invoices.

Mr. Robnett: I think that that matter, from counsel's statement, that is, counsel of the Government, as to what he proposed that he was going to introduce or try to introduce, that it would appear that that motion would be good here.

The Court: If you wish to make the motion as a matter of record to protect your record at this time, I will deem it made on the same grounds in this case that you made it in the other case.

Mr. Robnett: I would like to have it so considered then, your Honor, and that that transcript be considered on that motion.

The Court: I will deny the motion without prejudice to its renewal.

Mr. Robnett: Thank you.

Mr. Katz: If your Honor please, I want to avoid—let me say first I had anticipated requesting the Clerk for a conference with your Honor before the opening statement. As [9] long as we are here together I will avail myself of the opportunity to make the statement now.

I want to avoid a repetition of what has heretofore happened in this case. I also want to avoid any prejudice that may result to the defendant Himmelfarb as a result of the statement that was made by counsel to your Honor yesterday at the conclusion of the case, that he intends to show OPA violations in this case. If that matter is one that is going to be touched on by him in the opening statement, if he intends to go into it inasmuch as he disclosed that fact to the Court, I think it is something that can properly be considered at this time.

The Court: Yes. I think it would be inappropriate for counsel to refer to other violations of any other statutes in his opening statement.

Mr. Strong: I don't intend to.

The Court: This is an income tax case and a question of how much money a man got and how much money he reported and how much he owed.

Mr. Strong: I don't intend to make a statement as to the other violation. What I merely meant to

say was that the source that was unreported comes from the overcharge of meat.

The Court: I may even think that that would be inappropriate, to say that it comes from the overcharges in meat, because that is a matter to be tried. [10]

Mr. Strong: Yes.

The Court: That is a matter to be determined, whether or not it was an overcharge or was not an overcharge in meat. The defendants have not been convicted of any such thing. No one can testify on it even, that it was an overcharge in meat.

Mr. Strong: I didn't intend to discuss it in my opening statement in any way.

The Court: I think all references to overcharges, I mean an OPA violation, should be carefully avoided in the conduct of the trial because we might again find ourselves in the situation where we have to declare a mistrial.

Mr. Strong: I don't understand that to mean that my witnesses cannot testify that they paid a certain amount and in addition that they paid some more.

The Court: That is true. But a witness cannot testify that he violated the law in doing it or that it was an overcharge. He can testify as to the amount of money that he paid, whether he paid it once or twice or three times, or on any such occasions. But any inference or implication or insinuation that such conduct on the part of the defendants was a violation of the law would, in my judgment, require me to give serious consideration to another motion for a mistrial.

Now do you have some other motions?

Mr. Katz: I just want to make this statement. I think [11] it is correct to say that before the Government can go into any matters of any receipts or matters of income, that they are required to show that a given amount was reported.

The Court: That is up to the Government to prove their case. They usually start off by introducing the income tax returns.

Mr. Strong: That is item No. 1.

The Court: That is the first step. They start out in these cases with the return.

I think another matter of record ought to be shown out of the presence of the jury. I talked with the Clerk, Mr. Clifton, yesterday evening and asked him whether or not he had called any of the jurors who had been on the panel yesterday. Their statement was made in the presence of the whole panel. He advised me that this was an entirely new panel of jurors and that none of them were called or are here that were on the panel the day before yesterday.

Mr. Robnett: There is one name that was on the list of names before, but I don't know that the party was here.

Mr. Kosdon: He is not here.

Mr. Robnett: Another matter—

The Court: You have called the roll, Mr. Clerk?

The Clerk: Yes. All but four are present. And they are on the way.

The Court: Does your roll call show that any of the [12] jurors are present who were present the other day?

The Clerk: No.

The Court: Very well. The record will be clear on that. I thought that it ought to be stated out of the presence of the jury also.

Mr. Robnett: Thank you, your Honor.

Now in order to keep our record straight, and basing this upon the statement of counsel as to certain evidence he will probably offer, at this time I also make a motion to suppress any and all evidence pertaining to matters with regard to meat or prices of meat or the sales of meat and any and all invoices of the defendants, or of either of them, or of the Acme Meat Company, on the ground that the defendant Sam Ormont, under subpoena before the grand jury, was required to and did testify in connection with some of such matters and did testify with regard to certain invoices and therefore he should be immune from prosecution and that the evidence should be suppressed and no evidence of any testimony he so gave or anything connected with that testimony should be introduced against him in this case.

The Court: I don't know. I am in the dark on it because I don't know what is going to be introduced or offered. I think you will have to make that objection at the time.

Mr. Strong: I will state now that I am not using any of the documents that he produced before the grand jury in connection [13] with his dealings

with Mr. King or the Southern California Meat Company. I am not using them. They don't show anything.

The Court: I will have to deny the motion.

Mr. Robnett: Without prejudice, your Honor?

The Court: I haven't anything before me. I will just deny it. It is without prejudice to its renewal in the event that you deem it necessary, in the interests of your client, to renew it.

Mr. Robnett: I see. Very well.

I don't believe this would be the proper time for the making of a motion which I had intended to make yesterday before the evidence started, and that is a motion based upon the lack of a bill of particulars.

The Court: I think that motion, for the purpose of the record, would have to be made after the swearing of the witness, the asking of the first question and before the answer.

Mr. Robnett: Very well. [14]

(The following proceedings were had in open court:)

The Court: Any ex parte matters?

The Clerk: No, your Honor.

The Court: United States v. Ormont and Himmelfarb.

Mr. Strong: Ready, your Honor.

Mr. Robnett: Ready.

The Court: The defendants are present in person and by counsel?

Mr. Robnett: Yes, your Honor.

Mr. Katz: Yes, your Honor.

(At this point a jury of 12 and one alternate were duly impaneled and sworn.)

The Court: Is it stipulated that each of the jurors is present in his or her place?

Mr. Strong: So stipulated.

Mr. Robnett: So stipulated.

Mr. Katz: Yes, your Honor.

The Court: And the defendants are present in person and by counsel?

Mr. Katz: So stipulated.

Mr. Robnett: So stipulated.

Mr. Strong: So stipulated.

The Court: This is the time for the making of the opening statement by the Government.

Mr. Strong. [15]

Opening Statement in Behalf of the Government

Mr. Strong: Your Honor, gentlemen, ladies and gentlemen of the jury, this is the time, as his Honor told you, for the making of the opening statement by the Government.

Of course you realize that what I tell you is not evidence in this case, it is not proof; it is just a statement of what I hope to be able to prove to your satisfaction. But it gives you a sort of a general outline of what we are putting evidence in for and what we expect to prove ultimately. It is like getting the outside view of a jigsaw puzzle. You look at the cover of the box and you get a pretty good idea as to what to do with the pieces when they

start coming out, and the pieces will of course consist of the testimony and other evidence which we put into the record.

What I hope to prove through these witnesses and through the other evidence is simply this—and I might point out at this point that although this is an income tax case, and although it involves money, accounting, accountants, and things of that kind which may be a little confusing to some people, which may be foreign from what you are accustomed to doing—essentially it is a very simple matter, because what the Government charges, as contained in the indictment, is simply this, that these defendants—or take them separately—that the defendant Sam Ormont during the year 1945 filed an income tax return, like everyone in the country who has a [16] certain income has to file a return. He filed one too. And on his income tax return he stated how much his income tax was, and he computed it just as you and I computed the tax on it, and he stated the tax on the income tax return. And he signed his name and he said that that was how much money he earned during that year 1944, and on which he had to pay a tax, and he said what the tax was.

What the Government charges is that Mr. Ormont didn't tell you the whole story. The amount of money that he put on his income as his taxable income wasn't all of his income. There was more income, a lot more income. And the Government will try to show you that in addition to the income which he reported on his income tax return he had

a lot more income, and that he didn't report it on his income tax return and that he didn't pay a tax on it. It is as simple as all that.

As to Count 2 we will show that Mr. Himmelfarb filed an income tax return covering the year 1944, and he also stated what he said was his income and he stated what he said was the tax. Now the only thing that is difficult about that, the only thing that the Government says is wrong with that, is that he didn't tell you the whole story on that return. He left out a lot of income. We are going to show you this extra income. We are going to show you that there was extra income, and that it was the kind of income on which he had to pay a tax and he had to report it, and he didn't do it. That is all [17] there is to that.

Of course as to Counts 1 and 2 we charge both of them together in each count, and we will try to show you, that as to Mr. Ormont's income for 1944 he didn't do it alone but he did it together with Mr. Himmelfarb. The two of them helped to put this thing across.

As to the second count which charges with reference to Mr. Himmelfarb's return for the year, it was Mr. Himmelfarb, together with Mr. Ormont, who is responsible for the fact that on the income tax return for Mr. Ormont for 1944 the whole income hasn't been reported and the whole tax hasn't been stated or paid.

As to Count 3, we will show you that in 1944, that is, the preceding year, Mr. Ormont filed an income tax return for the year 1943, and there again

the same thing happened. He stated what his income tax was for that year, he stated what the tax was, and we claim that he didn't state the whole thing. He had a lot more, and we will show you that he had a lot more.

We will also show you that the additional amount of many was money which was taxable as income, and we will show you how much tax he should have paid on the additional amount that he didn't report.

In the last count we will show you that in 1943, when you had to file income tax returns for the preceding year for [18] 1942, Mr. Ormont had done exactly the same thing. He had stated what his income was for 1942, he had stated what he had computed his tax to be, but the trouble is he didn't tell the whole thing. He had a bigger income and he should have paid a bigger tax.

In connection with each of these counts we will show you that it wasn't just an honest mistake, that it wasn't just an oversight on his part, as sometimes may happen, and it wasn't unintentional. We will show you that it was a deliberate and willful act on the part of the defendants charged in each of those instances and that they willfully concealed or attempted to conceal the true income which they had.

You will hear a lot of witnesses, both for the Government and the defense, I assume, but there is one thing that is important and that we are going to show through all these witnesses, regardless of how many figures there are and what discussions there

are. Ultimately we are going to show you that in addition to the amount reported as income for each of these years for each of these defendants, he had more income, he knew he had it and he willfully concealed it by not reporting it.

That is all that the Government's case consists of, and that is all that these witnesses will be brought in to show, just those things, that a certain amount of income was reported, additional income was earned but wasn't reported and [19] it should have been reported, and the failure to report this additional amount was willful and deliberate, and they knew what they were doing when they didn't report it. . . .

That is the Government's case, ladies and gentlemen.

The Court: Do you desire to make your statement now or reserve it to a subsequent time, either of you?

Mr. Katz: If the Court please, I would like to make my opening statement at this time. I understand that Mr. Robnett, on behalf of the defendant Sam Ormont, wishes to reserve it.

The Court: You wish to reserve your right?

Mr. Robnett: Yes, your Honor.

The Court: Very well.

Opening Statement in Behalf of Defendant Himmelfarb

Mr. Katz: May it please the court, Mr. Strong, counsel, and ladies and gentlemen of the jury, you have heard Mr. Strong's statement. You will also

hear the evidence. I believe that the evidence will show that the defendant Himmelfarb is a humble citizen and an ordinary taxpayer like you and I and the millions of others who are citizens and taxpayers of this country.

I believe the evidence will show that the defendant knows no more about the intricacies and the complexities and the ramifications of income tax returns than you and I and the millions of other ordinary and humble citizens who pay taxes, and that I think were no less confused and bewildered and befuddled than are all of us when we read and understand and try to figure out, not alone the income tax return, but the explanations of what you are supposed to do with that return. And consequently that the defendants, like most of us, go to the bookkeepers and to the auditors and to so-called tax experts to get them to do for us what most of us feel we cannot safely do alone, and that the defendant Himmelfarb, on whose behalf I address you, presents his information that is asked of him by the individual or the person who is supposed to be skilled in the making out of the return, just does what he is told to do with respect thereto, and signs what is before him as being the true and correct and proper way of handling that matter.

Actually I feel certain that after hearing the testimony that you will find, and that the evidence will show, that this case springs from a difference of opinion between the Collector of Internal Revenue and the defendant as to when his taxes should have been paid. I make that statement because I believe

that the evidence in this case will actually show—and I believe that the government's own evidence and that the government's own contentions will establish—that there not only was and is do tax due and owing but the defendant Himmelfarb has paid not only all of his taxes but actually has overpaid his taxes and is entitled to a refund.

The difference between the government and the defendant Himmelfarb at least amounts to this: The government claims that certain income which the defendant reported and paid in 1945 and which the defendant Himmelfarb believed to be reportable and payable in 1945 should have been reported and paid in 1944. The fact is that the amount that the defendant Himmelfarb paid in 1945 and which the government claims should have been reported in 1944 as income for that year rather than 1945 is added to the 1944 return in accordance with the government's contentions and consequently deducted from the 1945 return in which it was included, the result is that the amount by which the 1945 tax is reduced is greater than the amount by which the 1944 tax is increased. That results from the difference in brackets. You know that as you pay taxes your taxes increase depending upon the income bracket in which you fall, and that the reduction of the 1944 tax brings the income down to a lower point for 1945 than the addition of that same amount to the 1944 tax will bring him up in the way of bracket. And consequently under the government's contentions, and as I understand those contentions up to this point, on the basis of their own

evidence it will show that there not only has not been a failure to pay but that the result is an over-payment of tax. Consequently a lesser amount was due in 1945 than was actually paid, a greater amount if the government is correct, would have been due in 1944, but the total amount for both years by the defendant Himmelfarb is less under the government's claims and contentions, the evidence will show, than the total paid by the defendant Himmelfarb for those two years.

The defendant Himmelfarb is not concerned with counts 3 and 4 of this indictment at all. Those are not directed to him. He is not named or in any way affected thereby.

Count 2—and I take these backwards, 3 and 4, and 2 and 1, because it seems just a little more logical to take them that way, having started out with 3 and 4, and which do not affect him at all—count 2 is directed against the defendant Himmelfarb and concerns the return filed by him for the year 1944. [23]

The defendant Himmelfarb is also mentioned in Count 1, and that is directed to him in this way: Count 1 concerns itself with the defendant Sam Ormont's 1944 return, but the count is directed against the defendant Himmelfarb as well as the defendant Sam Ormont upon some theory, as yet unknown to me and as yet unexplained, that in some manner or other the defendant Phillip Himmelfarb had something to do with the preparation or the filing of the defendant Ormont's return.

Ladies and gentlemen of the jury, I disclose no secret to you in telling you now that the evidence will show that the defendant Phillip Himmelfarb didn't and couldn't prepare and file his own return, let alone prepare and file returns for other persons, and that the evidence will show that the defendant Himmelfarb had nothing whatsoever to do with the defendant Ormont's return, knew nothing about what was included, what was set forth therein, or any phase of it.

That, ladies and gentlemen, I believe you will find to be the evidence that will be presented here. Thank you.

The Court: The defendant Ormont reserves his right, which he may do under the law, to a subsequent time in the trial to make an opening statement.

Call your first witness.

Mr. Strong: May I have these documents shown to counsel and then I will offer them in evidence.

The Court: Let the clerk mark them in evidence first. [24]

Have you four?

Mr. Strong: Five.

The Court: They will be 1, 2, 3, 4 and 5. Then show them to counsel.

(The documents referred to were marked Government's Exhibits 1 to 5 inclusive for identification.)

(Exhibiting documents to counsel.)

Mr. Strong: May I have this one marked too, your Honor?

The Court: No. 6.

(The document referred to was marked Government's Exhibit No. 6 for identification.)

Mr. Strong: I offer in evidence Government's Exhibits 1 through 5 for identification which are certain photostatic copies of the income tax returns.

Mr. Robnett: You are offering them in evidence now?

Mr. Strong: Yes.

Mr. Robnett: If your Honor please, I object to them on the ground that they are incompetent, irrelevant and immaterial, and on the further ground that the indictment in this case does not state a cause of action against the defendant Sam Ormont, and the indictment coupled with the bill of particulars which was given, does not state a cause of action or an offense against the defendant Sam Ormont; and that in addition thereto, that for the lack of the allegations in the indictment and in the statements in the bill of particulars, the lack of them, that the defendant Sam Ormont is taken by surprise in the introduction of any evidence whatsoever.

I have a motion that I would like to address to your Honor alone in connection therewith.

The Court: Do you wish to join in the motion, Mr. Katz?

Mr. Katz: Yes.

The Court: You object to the introduction of any evidence?

Mr. Robnett: I object to the introduction of any evidence.

The Court: On the grounds heretofore indicated?

Mr. Robnett: Yes.

Mr. Katz: I will adopt that, if the court please.

The Court: Do you have any additional data or authorities in addition to that which you have heretofore presented?

Mr. Robnett: They were presented at one time, not to your Honor of course. I have some authorities. I want to get the books themselves.

The Court: Very well. The jury will be excused. We will have to recess this afternoon about 4:00 o'clock. I wonder if it would be convenient for counsel to return at 1:30 today. [26]

(Assent.)

The jury are excused until 1:30. You are admonished not to discuss this case with any person or among yourselves, nor to form or express a conclusion until it is finally submitted to you.

At 1:30 you will resume your places in the jury box.

(The jury retired from the court room at 12:00 o'clock p.m.)

Mr. Robnett: Do you wish me to present it now or at 1:30?

The Court: If you haven't anything new to offer, you can present it now. If it is merely a repetition of what has heretofore been put in your briefs, you may present it now.

Mr. Robnett: I have some authorities, unless your Honor has read the authorities that were submitted in connection with my motion for a bill of particulars. If you have read all those authorities I have no new ones to offer.

The Court: I have not read them all but I glanced at them, I think, sufficiently to be familiar with them.

Mr. Robnett: There are one or two of them that I thought would be quite pertinent, but if you have read them of course that is another thing.

There are three cases in particular relative to what should be contained in a bill of particulars in a case of [27] this kind.

The Court: I think it better to present this at 1:30. I will read the authorities in the meanwhile.

Mr. Robnett: Very well, your Honor.

The Court: Recess until 1:30 o'clock. All witnesses are instructed to return at that time.

(Whereupon, at 12:00 o'clock p.m., a recess was taken until 1:30 o'clock p.m., of the same date.) [28]

Los Angeles, California; Friday, May 23, 1947

1:30 o'Clock

The Court: Ex parte?

The Clerk: No ex parte, your Honor.

The Court: United States v. Ormont and Himmelfarb.

Mr. Strong: Ready for the government.

The Court: The defendants are present?

Mr. Katz: Yes, your Honor.

Mr. Robnett: Yes.

The Court: All right, Mr. Robnett. You have a motion to present.

I didn't read all of these cases, but I am familiar with the Schenck case and I read the Hargrove case. The Hargrove goes off on a point of wilfulness.

Mr. Robnett: You did not read the United States vs. Empire State Paper or United States vs. Farrington?

The Court: No.

Mr. Robnett: These are both the trial court's rulings and are in the supplement.

The Court: If you will hand them to me, I will glance at them.

Mr. Robnett: I will just get the pages, if you don't mind, and will hand them to you.

The Court: The clerk calls my attention to the fact that you haven't formally stated your motion for the record [29]

Mr. Robnett: Very well. I will do so now. I will hand your Honor these two books.

(The volumes referred to were passed to the court.) [30]

The Court: Well, these are both District Court cases, and while I certainly regard them as respectable authority, nevertheless they point out that the allowance or disallowance of bills of particular are within the sound discretion of the court.

Here in this case the District Judge on the demand for bill of particulars allowed it in so far as he thought it was necessary to inform the defendant to enable him to prepare his defense, and in so far as he was entitled to have it granted according to the allegations of the indictment on file.

Had I been hearing it at that time I might have reached a different conclusion. But I still think that that is the law of the case, and I still think that he granted the bills of particular in the particulars which he should have granted them and no more.

On the question of wilfulness, which some of your cases go to, the instruction which I will read on that to the jury I have here, I have compounded it from the leading case of Crawford—I can't think of the name of the case, 285 U. S., and also a Ninth Circuit case. As I understand the basis of your motion, I won't say the basis, but one of the elements which you assert as persuasive that you should be granted this bill of particulars is because your defense will be—and the government regardless of your defense should prove [31] beyond a reasonable doubt that the conduct was wilful, and that from this accusation it cannot be determined whether it was wilful unless and until you know the things that you are asking for in the bill of particulars.

Mr. Robnett: That is part of the grounds. The grounds are very numerous. To split them up, I am objecting to the introduction of any evidence on the ground that the indictment plus the bill of particulars are insufficient as against our motion for a bill of particulars and against our motion to dismiss—

The Court: To state an offense?

Mr. Robnett: To state an offense and to state it with enough particularity so that we could prepare our defense thereto. And that I was going to ask, without going over it in great detail, if it might be understood that my objections and motions are based upon each and all of the grounds and specifications I set forth in the motion for the bill of particulars in the original instance, which is on file herein and is in writing.

The Court: Yes.

Mr. Robnett: There are some great number of specifications there.

The Court: Yes, it may be deemed that your objection to the introduction of any evidence will be based not only upon your stated grounds but upon all of the grounds set forth [32] in your motion for bill of particulars.

Mr. Robnett: Your Honor, in addition to that, at this time I wish to add to my objection to the introduction of any evidence the further ground that the indictment is multifarious, each count is, for the reason that in the second count of the indictment they first enumerate, as you recall—

The Court: Yes, I remember the portion that is preceded by the Arabic numeral 2 in parentheses.

Mr. Robnett: "By concealing and attempting to conceal from the said collector and any and all proper officers of the United States the true and correct gross and net incomes received by him during the said calendar year and the sources thereof." None of that is covered by subdivision (b) of Sec-

tion 145. Those are only made misdemeanors and they are incorporated herein in this indictment for a felony, and supposing that the case went on to trial in that form the jury might find those particular things the defendants had done, those misdemeanor things, and yet render a verdict of guilty on each count, and we would have an apparent verdict of a felony rather than a misdemeanor, whereas they should not be before the court, in my opinion.

Mr. Strong: Your Honor, in that connection I would just like to point out the Supreme Court in the Spiess case which came down recently specifically pointed out that the big difference between 145(a) and 145(b), the former being the [33] misdemeanor and the latter being a felony, is in the amount of wilfulness and intent present, but that the elements of the offense are the same. In the one instance it is the failure to file a correct return to include those matters on the return which in and of itself gives rise to a violation, and in the second case it has to be a wilful attempt to defeat and avoid, which is just a little bit beyond the point of simply not returning, but in all other respects it is the same thing, and we are prepared to prove it was done wilfully, as is required by 145(b), and that is what we have alleged.

The Court: That doesn't seem to be the defendant's point. His point is that 145(a) makes the offenses there proscribed misdemeanors, and 145(b) makes the offenses there proscribed felonies. Now, your indictment here says that it is under Section

145(b). All of that portion of the indictment in each count down to the Arabic numeral No. 2 in parentheses in each count states an offense under (b). Defendant's point is from 2 on you state another and different offense, which is a lesser offense, to-wit, a misdemeanor, and that by a verdict of guilty on each of the counts neither the defendant nor anyone else will have a means of knowing whether or not they have been convicted of a felony or a misdemeanor.

Mr. Robnett: That is exactly right.

Mr. Strong: Which the government disputes on the ground [34] that 145(a) and 145(b) provide for the same type of an offense, except in one the element of wilfulness being much more aggravated it is made a felony, and in 145—

The Court: Even assuming that you are correct, that doesn't meet defendant's objection.

Has this objection been heretofore advanced?

Mr. Robnett: I believe it was in my motion to dismiss, but I won't state definitely. I had a very lengthy motion and a great many grounds, and I am not certain, your Honor.

Mr. Strong: We can look at it right now, your Honor.

Mr. Robnett: Under paragraph 4 on page 4 I believe it does, your Honor.

Mr. Strong: Also the top paragraph on page 4, and paragraph 3 itself on that page.

Mr. Robnett: They all raise the point, which is an additional point.

The Court: The memorandum of the trial judge makes no mention except that the motion to dismiss the indictment is denied.

Mr. Strong: I would like to call your Honor's attention to the provision of Statute 145(a) and (b). This is within 145(b).

"Any person who wilfully attempts in any manner to evade or defeat any tax imposed in this chapter."

In any manner. It doesn't say "in any manner except those provided in 145(a)."

I would also like to state for the record, your Honor, that I don't think that these motions should be brought up time and again, because they have been ruled upon before, and so far we have had three delays in this trial because we get this tandem repetition of motions for bills of particular, to dismiss, over and over again. The motions were made; the record is preserved. If there is any point to it, and if there is a conviction and judgment, it can then be reversed on appeal if it is true that the point is good.

We have had these motions before. This is already the third day, and still we are in the motions, which is simply a repetition under the motion.

The Court: Under the law it is necessary for the defendant, in order to preserve his record at this stage of the proceeding, before the admission of any evidence, to object to the introduction of any evidence on the ground that the indictment doesn't state an offense, for the reason that this

is the only period in the trial where it can be said that the defendant is in jeopardy.

Upon further reading Section 145(a) and 145(b), and the indictment, it is my conclusion that there is not a statement of two offenses, nor is there an attempt to state two offenses; that the only offense stated is an offense under 145(b), which [36] is an attempt to evade or defeat any tax imposed.

It seems to me that that portion of each count beginning with the Arabic numeral 2 in parentheses is surplusage. It is not language taken from any statute. I cannot see how, if this indictment only contained that language, together with the other identifying particulars, it could be held to state an offense under 145(a).

Or to state it another way: that portion of each count beginning with paragraph (2) does not state an offense under 145(a). It is merely descriptive of the offense which is charged, namely, the charge to evade and defeat described by paragraph (b), and being merely descriptive it is surplusage and may be disregarded.

Mr. Robnett: Well, your Honor, you observed the things in (a) more specifically do cover such things as his failure to supply or furnish information.

The Court: That's right. But all they have charged here is a wilful attempt to defeat and evade. This beginning with (2) "by concealing and attempting to conceal from the said collector and any and all proper officers of the United States the true and correct gross and net incomes received

by him during the said calendar year and the sources thereof" is not an offense under subdivision (a).

If that were all that were in this indictment I would be compelled to hold that it did not state an offense under 145, [37] subdivision (a). And it is merely descriptive of the conduct of the defendants which was used and exercised by them in what the government has charged to be the wilful attempt to defeat and evade.

Mr. Robnett: Your Honor, I call your attention to the fact that it is in the conjunctive and therefore it seems to me if it has any proper place in there at all, or performs any function, that it would become necessary for the government to prove not only the one under that paragraph, but also "and by concealing," and so forth.

The Court: The government cannot by describing the conduct of the defendant make that an offense, unless the statute makes it an offense. And the government here by the use of the conjunctive "and," whatever some scrivener of the pleadings might have had in mind, has not succeeded in stating another offense. So that the only offense that is charged is that under 145(b), and that is the only evidence which would be admissible, which is evidence which would go to prove an attempt to defeat and evade, which of course gives considerable latitude to the government and might even include, conceivably, a concealment from officers of the government of the true and correct gross income received.

Mr. Robnett: Then the question of the source—

The Court: If I could read the indictment the way you claim it exists, then I would have to grant your motion. [38] But I cannot read the indictment that way.

In other words, I do not think that there is charged in the single count the two offenses.

Mr. Robnett: Your Honor, I have another objection that I wish to make, but in face of what your Honor has said—as I understand, the government by its opening statement told us what it intends to prove. There has been no statement, if I understand Mr. Strong's statement, that they were going to attempt to prove that anything was kept from the collector or any of the officers of the government under subdivision (b), or that they failed to disclose the sources of income. If that be true, I think they are limited to their statement of what they tell us they are going to prove.

Mr. Strong: No.

The Court: No. The attempt to defeat and evade is language which will permit a very wide latitude, and would include evidence of conduct of the defendants of concealing from officers, if that is part of the evidence that they have. But that only would go to that one offense and wouldn't go to the creation of another and separate offense.

Mr. Robnett: My point being only this, your Honor: that I thought it was their duty to advise us of what they were going to prove, and if they didn't offer to prove anything of that sort, then

we should not be called upon to defend against it.

The Court: I think his statement was sufficiently broad and that it was commendably short.

Mr. Robnett: Yes, indeed. I am not criticizing that at all, your Honor.

Your Honor, I think it would be proper to enlarge my original objection to the exhibits at this time without the jury present, or would I have to wait until the jury comes in? I have an objection that isn't based entirely upon the matters I have just stated.

The Court: Let us take one thing at a time. Your objection to the introduction of any evidence on the ground that the indictment, as supplemented by the bill of particulars, does not state an offense, is overruled.

Mr. Robnett: Very well.

Mr. Katz: May I interrupt? I don't know whether your Honor wants to hear all matters on one motion before going on to another or not. If your Honor does, I would like to——

The Court: Do you have some additional matters on that motion?

Mr. Katz: On the basis of your Honor's ruling there is nothing that I would add to it. On the basis of Mr. Strong's statement, I would like to make the observation to your Honor that, first, 145(a) covers an offense different and separate and distinct from 145(b), and I don't believe that it can at any time be said that the same offenses may be proved as an [40] offense under 145(b), because

I don't believe it is possible for the same offense to be a misdemeanor and a felony at the same time, and as a result of the very same transaction. And if that statement is correct—it doesn't go to your Honor's ruling, it goes to the statements of Mr. Strong—if the statement is correct that the count of the indictment is sufficiently broad to be a statement of an offense under either (a) or (b), then we are confronted with a situation that is in violation of the rules, and as heretofore called to the attention of the court, as appears from the memorandum, a statement of two offenses joined in one count not being separately stated, and of course a statement of two offenses, neither of which defendant may know in advance of trial which it is that the government is going to prove.

Your Honor's ruling has eliminated that possibility, so I have nothing to add on the basis of that. But on the basis of counsel's statement, I would add to the objection.

The Court: Well, Mr. Strong doesn't like it sometimes, but he isn't the one that is making the rulings.

Mr. Strong: That is all right with me always.

The Court: I understand.

Mr. Robnett: Now, your Honor, if I may add specifically to the objection of these exhibits that has been offered—

The Court: In order to keep the record clear, I take it that you, Mr. Katz, were joining in the motion? [41]

Mr. Katz: Yes, your Honor. It is my understanding that that is understood unless one or the other of counsel specifically excludes himself from a given motion or ruling.

The Court: Very well.

Mr. Robnett: I will so understand it in the future, your Honor.

The Court: Very well. The objection to the introduction of any evidence on behalf of both defendants on the ground that the indictment does not state an offense is overruled.

Mr. Robnett: My motion, rather, would be considered as a separate motion to each count, I take it. That is the way I want it.

The Court: As to each part, surely.

Mr. Robnett: As to each count in the indictment.

Now, your Honor, take up the offered exhibits. They are in for identification with numbers.

The Court: 1, 2, 3, 4, 5.

Mr. Robnett: Yes. Taking up No. 1, which appears to be an individual income tax return for 1942, for the calendar year, by Sam Ormont, I wish to object to the introduction of that as not being within the issues in the indictment and the plea of the defendant of not guilty, for the reason that the count it would be under—

The Court: Count 4.

Mr. Robnett: I will have no such objection, I see, as to that one. [42]

My objections rather will be to exhibit for identification No. 3, which is the individual income tax

return for the calendar year 1944 by Sam Ormont. I object to that on the ground that under the only count in the indictment, No. 1, that that would be applicable, if at all—it is not admissible because it is not within the charge in that count for this reason: This return, if your Honor will examine it, is a simple return of ordinary taxes and no Victory tax whatever, yet the charge in the indictment of what this defendant did was that he filed a false and fraudulent income and Victory tax.

The Court: Not in Count 1.

Mr. Strong: Not in Count 1.

Mr. Robnett: Oh, yes, on lines 30 and 31.

The Court: Yes, I see it. It doesn't allege any violation in connection with the Victory tax.

Mr. Strong: May I answer that this way, your Honor: This piece of paper which you have is an income and Victory tax return when it is blank, and the sum that we charge they filed is the sum for income tax. But the document itself is an income and Victory tax return.

Mr. Robnett: They had no such thing as Victory tax in that year, counsel. The Government put out no form on which to file a Victory tax report for 1944.

The Court: Why doesn't the Government furnish legible photostatic copies on white paper? I have said that a thousand [43] times and I am going to keep on saying it.

Mr. Robnett: I will join with you.

Mr. Strong: I shall report the request to the Attorney General, with the usual results, I am afraid.

Mr. Robnett: By comparison of that exhibit with Exhibit 3 I believe it is—

The Court: If you had no Victory tax in 1944, then the word Victory tax is surplusage.

Mr. Robnett: It is the kind of a return, the act, that they have charged us with doing. They have charged us with doing a certain act. That is *how are* charged with our crime, by preparing or causing to be prepared or filing or causing to be filed a certain kind of instrument.

The Court: Where does that say Victory tax? I cannot see it.

Mr. Robnett: It doesn't on the 1944.

The Court: Do you have the originals there, Mr. Strong?

Mr. Strong: Yes, I am getting them out.

Mr. Robnett: If you will look at 1943 return you will see that we had a Victory tax that year.

Mr. Strong: Supposing it is a different kind of form, we don't charge them with filing an improper Victory tax. We are only talking about the amount of money that he reported and the type of tax.

The Court: No. [44]

Mr. Strong: Suppose we call it a piece of yellow paper on which he reported his income tax, and that was within the purview, that he could report it on a yellow piece of paper, would that make any difference?

The Court: Yes, because a yellow piece of paper cannot be used for a return to report your tax on. And you charge him here with willfully preparing

and causing to be prepared and filing and causing to be filed a false and fraudulent income and Victory tax return. Everything else is descriptive. The offense is the filing, as you have alleged it here. Let me read the statute again.

That wouldn't be a ground for objection to the introduction of this document in any event.

Mr. Robnett: I think it is confusing to the jury to allow the document to go in if it doesn't prove anything in the case, and it doesn't prove or tend to prove anything in the case.

The Court: When the evidence is all in there may be a failure of proof. At that time it would seem to me it would be more appropriate to give consideration to your objection.

Mr. Robnett: I want to interpose that objection to that exhibit.

I also want to interpose similar objection to Exhibit 4, which is the United States individual income tax return in 1944 for Phillip Himmelfarb. The reason I am doing that is [45] as you know, my defendant is charged jointly with Mr. Himmelfarb under Count 2.

The Court: That is right.

Mr. Robnett: Therefore I am objecting to that one on the same ground that I have stated for the other one.

I also wish to object upon that ground and upon the further ground that it is hearsay and incompetent, irrelevant and immaterial as to Exhibit 5 for identification, which is being offered, which is the United States individual income tax return for 1944

for Ruth Himmelfarb. There is no charge in the indictment anywhere that Mr. Ormont ever helped prepare or caused to be prepared any return for Ruth Himmelfarb, not within the issues in this case.

The Court: Let me see it.

(The documents referred to were passed to the Court.)

The Court: The objection is overruled as to Exhibits 1, 2, 3 and 4. There is not sufficient foundation to admit Exhibit 5.

Mr. Katz: Your Honor please, before your Honor makes the ruling—

Mr. Strong: May I say something as to 5?

The Court: All right.

Mr. Katz: I want to add to it, but I take it the ruling is a ruling that goes as to both defendants?

The Court: Yes. [46]

Mr. Katz: I wish to add to that, if the Court please, the objection that with respect to the return of Mr. Ormont and the objection I make is of course on behalf of the defendant Himmelfarb, there is no foundation laid for its admission as against the defendant Himmelfarb, it is incompetent, irrelevant and immaterial, and it is hearsay as to him, and there can be no foundation laid for it until such time as it is established by evidence before this court that the defendant Himmelfarb was in some way connected with the document offered.

The Court: I understand your point. That is as to No. 1—well, all those—

Mr. Katz: All of Mr. Ormont's returns.

The Court: All of Mr. Ormont's returns.

Mr. Katz: Yes, your Honor.

The Court: I think that is correct, Mr. Strong.

Mr. Strong: Yes, I think so too.

Mr. Katz: As to the others, the Ruth Himmelfarb return, the objection I make is on behalf of the defendant Phillip Himmelfarb, that there is no reference in any count of the indictment to that in any way, shape, form or manner.

The Court: The allegation in the indictment with relation to Himmelfarb, which is Count 2, is that he made the return on a community property basis. It is conceivable that that document might be admissible, but presently it is not [47] admissible because there is no foundation to show that Ruth Himmelfarb or the Ruth Himmelfarb who made that return is the other portion of the community referred to in the indictment when it refers to Phillip Himmelfarb and his return on a community basis.

Mr. Katz: There is one further fact that I call to your attention in connection with that, and that is this, that the counts specify the returns, specify by whom filed and the amount reported thereon. There is no possible reference by those amounts so limiting the returns referred to and designating the returns that could make the return of Ruth Himmelfarb admissible, and it would only be confusing, even though the return that the defendant Himmelfarb, and that is described, filed on his own behalf is one that is a community return.

The Court: Presently it is not admissible. If subsequently offered when a sufficient foundation is laid, that will be sufficient time to determine whether or not it is admissible as evidence, not of any violation contained in the Ruth Himmelfarb return but of the violations alleged in Count 2 of the indictment.

Mr. Robnett: May I add to my objection to the Himmelfarb returns, to each and all of them, the same objection that counsel has just urged as to the Ormont returns, on the ground that there is no proper foundation laid to correct those returns with my client Mr. Ormont? [48]

The Court: Do you wish to be heard before I rule?

Mr. Strong: Yes, just one point before your Honor decides it, and that is, in the Ruth Himmelfarb return, the name of the person with whom she is filing this one-half community property return is Phillip Himmelfarb, and on Phillip Himmelfarb's return I believe it says—

The Court: Ruth Himmelfarb.

Mr. Strong: —Ruth Himmelfarb.

The Court: I suppose of the millions of people who file tax returns there might be several Himmelfarbs.

All right. Here is the ruling of the Court on the offer in evidence: On No. 1, 2 and 3 for identification, they are admitted in evidence against Sam Ormont only.

No. 4 is admitted in evidence against Phillip Himmelfarb only.

Otherwise the objections are sustained.

Mr. Strong: May I be heard further on No. 5, because I want to avoid bringing in witnesses if it is not necessary, and I may be able to convince your Honor.

I want to point out—

Mr. Katz: If the Court please, in so far as the necessity for proving the relationship, I will stipulate to that.

Mr. Strong: Then we have no problem.

The Court: You don't have to bring in any witnesses.

You will stipulate that Ruth Himmelfarb is the wife of [49] Phillip Himmelfarb?

Mr. Katz: Yes, your Honor.

The Court: That Ruth Himmelfarb who filed that document is the wife of Phillip Himmelfarb?

Mr. Katz: Yes, your Honor.

The Court: All right.

Mr. Strong: Then there are no problems, your Honor. I offer it again as to of course just the defendant Himmelfarb. I am not offering it as against the defendant Ormont.

The Court: It will be admitted as to Phillip Himmelfarb alone.

Now counsel in their authorities talked about willfullness. I think perhaps I should read to all of you—maybe I have an extra copy here—the instruction which I will give on willfulness, because these cases usually turn on that.

“Willfulness is an element, as I have indicated, in each of the offenses charged in each of the Counts 2 and 3, and it must be estab-

lished by the same degree of proof as any other element of the offense. Under the statute involved in this proceeding—and I propose to read 145(b) to the jury—it is necessary, before you find the defendant guilty as I have indicated, to find that he violated the law willfully. The word ‘willfully’ as used in the indictment and throughout these instructions simply means an intentional conscious doing of the act prohibited, that is, intending the result [50] which actually came to pass without ground for believing that it was lawful, or conduct marked by a careless disregard as to whether it is lawful or not, or deliberate unwillingness to discover and obey the law. Or to express it another way, it means an act done with a bad purpose or with an evil motive to accomplish what the statute prohibits without regard to what the law provides. So that you must come to a conclusion with relation to the element of willfulness beyond a reasonable doubt from all of the facts disclosed by the evidence, taking into consideration the conduct of the parties with relation to the matter charged, and every circumstance which bears upon that issue of willfulness, and when you have considered all of the acts of the parties, their relation to each other, the object to be obtained, the things that were done, the circumstances under which they moved, the motives that prompted the various ones in so far as disclosed from the evidence, and whether the defendant acted in good faith

or not—from all of these you will determine whether or not any act, if done by the defendant, was beyond a reasonable doubt done willfully.”

Now that is the instruction which I propose giving. I will give each one of you a copy of it.

Do you have some more motions?

Mr. Robnett: I believe that is all, your Honor.

The Court: Call the jury down. [51]

(The jury returned to the court room at 2:15 o'clock p.m.)

The Court: The record will show that each of the jurors is present in his or her place and that the defendants are present in person and by counsel.

Proceed.

Mr. Strong: Mr. Allen.

The Court: The documents 1, 2, 3, 4, and 5, offered by the government before recess, ladies and gentlemen of the jury, have been received in evidence as follows:

No. 1 is the income tax return of the defendant Ormont for 1942. It is received in evidence against the defendant Ormont only.

(The document referred to was received in evidence and marked Government's Exhibit No. 1.)

The Court: No. 2 is the income tax return of the defendant Ormont for 1943. It is received in evidence against the defendant Ormont only.

(The document referred to was received in evidence and marked Government's Exhibit No. 2.)

The Court: No. 3 is the income tax return for 1944 for the defendant Sam Ormont, and it is received in evidence against the defendant Ormont only.

(The document referred to was received in evidence and marked Government's Exhibit No. 3.) [52]

The Court: No. 4 is the income tax return of Phillip Himmelfarb for the year 1944 and is received against the defendant Himmelfarb only.

(The document referred to was received in evidence and marked Government's Exhibit No. 4.)

The Court: No. 5 is the income tax return of Ruth Himmelfarb and the parties have stipulated that the Ruth Himmelfarb involved is the wife of Phillip Himmelfarb. It is the income tax return for her for the calendar year 1944 and it is received in evidence against the defendant Phillip Himmelfarb only.

(The document referred to was received in evidence and marked Government's Exhibit No. 5.)

The Court: Swear the witness.

ALBERT D. ALLEN

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Albert D. Allen.

The Clerk: Your address?

The Witness: 601-B East Chevy Chase Drive; Glendale.

The Clerk: Take the stand.

The Court: Do the parties have any motions concerning the exclusion of witnesses, either one side or the other? [53]

(No response.)

Very well. Proceed.

Direct Examination

By Mr. Strong:

Q. Mr. Allen, what is your occupation?

A. Deputy Collector of Internal Revenue.

Q. What district?

A. Sixth California district.

Q. Where is your place of business?

A. In this building. My office is Room 1121.

Q. How long have you had that position?

A. The way I gave it, 11 and a fraction years.

Q. In connection with your position as Deputy Collector of Internal Revenue here in this district, do you have under your supervision and jurisdiction any of the records, official records, of the Office of the Collector of Internal Revenue showing how

(Testimony of Albert D. Allen.)

much money was paid on the income tax returns that are filed during these years?

A. I have.

Q. Would you please state whether you have examined the records in the office of the Collector of Internal Revenue here to determine how much, if anything, was paid in connection with the income tax reported by the defendant Sam Ormont for the calendar year 1944 and the calendar year 1943 and the calendar year 1942? [54]

A. I have.

Q. Have you done so also with reference to the payment upon the income tax reported by the defendant Phillip Himmelfarb for the calendar year 1944?

A. I have.

Q. Now you have before you there Government's Exhibits I through 4 inclusive, also No. 5. Just look at numbers I through 4, the income tax returns for these persons for the years I have enumerated.

Would you state how much tax was paid by the defendant Sam Ormont in connection with the return for the calendar year 1944?

Mr. Katz: Objected to, if the court please, on the ground that that, as against the defendant Himmelfarb, has no foundation laid and has no bearing on any issue in this case.

The Court: The objection is sustained as to the defendant Himmelfarb.

Mr. Strong: In order to save time, may I say that when I am going to offer testimony with ref-

(Testimony of Albert D. Allen.)

erence to the documents which are signed by the defendant Ormont, that I will only limit the offer to the defendant Ormont until such a time as I say I am offering it as to both; and on the Himmelfarb one, that will be the same. I don't know whether that is satisfactory to counsel or not, but I thought it might [55] save some time.

The Court: I have ruled on this objection.

Mr. Robnett: I want to object on the ground that the records would be the best evidence.

The Court: He has the records before him. He has the exhibits in evidence.

Mr. Robnett: If that is the record of payment, why of course that is all right. I thought they had other books or records because counsel had asked him if *examined* the records of their office to see how much had been paid. I thought they had other books showing payments besides.

The Court: What is the method of keeping books up there?

The Witness: We have other records, your Honor.

The Court: Is that your primary record of payment?

The Witness: Yes, sir.

The Court: Then if there are any additional payments you have other records?

The Witness: Yes, sir.

The Court: You have verified the other records?

The Witness: Yes, sir.

(Testimony of Albert D. Allen.)

The Court: Does there appear to be any payment other than indicated on the return by the other records before that year?

The Witness: I have not checked against this. My [56] records, or the figures are taken from our records in this building, and I have not checked them against the returns before I came here.

The Court: You haven't?

The Witness: No, sir. I mean before I sat in this chair.

Mr. Strong: Check them now.

The Witness: I have caused the records of our office to be checked to see the payments and I have recorded those on a sparate sheet of paper.

Mr. Strong: Let him check them now.

The Witness: But I have not checked that paper against these returns. Shall I do that?

The Court: What was your objection now, Mr. Robnett?

Mr. Robnett: I object on the ground that the records are the best evidence and not the testimony of the witness as to what he thinks they show.

Mr. Strong: It isn't what he thinks they show but what he examined them in his official capacity.

The Court: That is still hearsay.

Mr. Robnett: Yes.

Q. (By Mr. Strong): Do you have the records available now upstairs?

A. If you have plenty of expressmen to bring them down here. [57]

(Testimony of Albert D. Allen.)

Q. Just the records as to these particular individuals in these years. I don't mean all the records for the whole office.

The Court: How do you keep the record up there? Do you keep a ledger page for each taxpayer?

The Witness: No, sir.

The Court: How do you keep it?

The Witness: There are 10 on a page.

The Court: 10 on a page?

The Witness: Yes, sir, and it is kept by account members.

The Court: You wouldn't have to bring too many records down here then for these years for these defendants. How big is the page?

The Witness: It isn't a question of a page, sir, it is a question of the size of the books. They can be brought down, I grant you.

The Court: How big are the books?

The Witness (Indicating): That thick, that long, and that wide.

The Court: Counsel's objection is still good. The original records are the best evidence.

Mr. Strong: Would you please go upstairs and bring down the records?

The Witness: Will you furnish someone to go with me? I can't carry those records down here.

Mr. Strong: Will you please go upstairs for the records and I will arrange to get somebody to help you?

The Court: I might suggest, in that connection, that under the statute a certified copy of the record

(Testimony of Albert D. Allen.)

is sufficient, and this witness, however, is not a certifier. All right. Go ahead. Bring your records down.

Mr. Robnett: I will say this to counsel, I don't want to put him to too much work, but if he will submit to me what he claims, we might be able to stipulate.

Mr. Strong: Just a moment.

Mr. Robnett: We might be able to stipulate as to the figures if we can agree upon it.

Mr. Strong: Do you care to look at the returns and see if you can stipulate. That is all we are offering, are the figures on the returns.

The Court: The witness said he checked some other documents and records.

Mr. Strong: The witness also needs help to bring down the voluminous book, so if I may consult with counsel we may not need those voluminous records and then he can stay here.

The Court: If you have another witness, we might put him on the stand now and you can consult at recess.

Mr. Allen, you may be seated there.

(Witness temporarily excused.) [59]

The Court: Call your next witness.

Mr. Strong: Mr. Baizer.

BENJAMIN BAIZER

called as a witness by and behalf of the government, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Benjamin Baizer; B-a-i-z-e-r.

The Clerk: Your address?

The Witness: 1208 South Crescent Heights Boulevard.

The Clerk: Is that in Glendale?

The Witness: That is Los Angeles.

The Clerk: Take the stand.

Direct Examination

By Mr. Strong:

Q. Mr. Baizer, what is your occupation?

A. I am a branch bank manager.

Q. What bank? A. Bank of America.

Q. Where?

A. Brooklyn and Soto branch.

Q. Have you been subpoenaed to produce here certain records of the Bank of America?

A. Yes, I have.

Q. Have you produced those records?

A. Yes, I have. [60]

Q. May I see them, please?

(The documents referred to were passed to counsel.)

Mr. Strong: May I have these six documents marked for identification, please?

The Court: Separately?

Mr. Strong: Yes, your Honor.

(Testimony of Benjamin Baizer.)

The Court: Nos. 7, 8, 9, 10, 11, and 12 for identification.

(The documents referred to were marked Government's Exhibits 7 to 12 inclusive for identification.)

Tthe Court: What do they purport to be, bank slips?

Mr. Strong: No. 7 is a withdrawal slip dated August 28, 1943. I won't mention the sums unless you want it.

No. 8 is a withdrawal slip dated May 25, 1943.

No. 9 is a withdrawal slip dated 8/26/43.

No. 10 is a signature card of Sam Ormont.

No. 11 and No. 12 appear to be the records of the bank showing the withdrawals and deposits and interest in the account of Sam Ormont.

The Court: Very well.

Q. (By Mr. Strong): I show you Government's Exhibits 7, 8, 9, 10, 11, and 12 marked for identification and ask you if you will state whether these are part of the official records kept in the due course of business by the Bank of America from whence [61] you came as you testified.

A. That is correct.

Q. Will you state what records those are?

Mr. Katz: We object to any further questioning along that line with respect to those documents as against the defendant Himmelfarb on the ground that they are incompetent, irrelevant and immaterial, no bearing on any issue in this case, no proper foundation laid, and that they are hearsay.

(Testimony of Benjamin Baizer.)

The Court: Sustained as to the defendant Himmelfarb. Do you remember the question?

Q. (By Mr. Strong): Will you state what those are by number? Take No. 7 first.

A. Shall I specify the amounts too?

Q. Just state what it is in general. They speak for themselves.

A. No. 7 is a savings withdrawal slip. No 8—

The Court: Dated?

The Witness: Dated August 28, 1943.

No. 8 is a savings withdrawal slip dated May 25, 1943.

No. 9 is a savings withdrawal slip dated August 26, 1944.

Q. (By Mr. Strong): As to these three withdrawal slips, you can state [62] whether these amounts were paid to the person who signed them?

A. Yes.

Mr. Robnett: If the court please, I object to them on the ground that they are incompetent, irrelevant and immaterial, and the question propounded, as to the defendant Ormont, as it shows, is that they are merely withdrawals from his savings account and there is no showing that they are income of any kind or character and therefore not within the issues of this case.

The Court: I take it all this is a preliminary matter?

Mr. Strong: Yes. I can't get to the income until I get to the records and if they are kept out we will never get to the income.

(Testimony of Benjamin Baizer.)

The Court: The objection is overruled, the general objection. Let me hear the question again.

(The question referred to was read by the reporter, as set forth above.)

The Court: That is of your own knowledge.

Mr. Katz: If the court please, with respect to the defendant Himmelfarb, to avoid making the objection to each question as it is made, I think some stipulation will probably expedite the matter. I don't want to have to do that.

The Court: If it will be deemed that you have made the objection to all of the questions asked by government counsel [63] without repeating it, and the same ruling made that I have made so far on these objections, unless government counsel avows that the evidence offered is offered also against Himmelfarb.

Mr. Katz: Thank you, your Honor.

The Court: Very well. Now I asked you whether you knew of your own knowledge that it was paid to the person who signed it.

The Witness: I didn't pay him but the staff members of the branch paid him.

The Court: Do you know who signed it?

The Witness: Mr. Ormont signed it, according to his signature card.

The Court: Do you know his signature?

The Witness: Yes, I have his signature card, the original signature card that was taken when the account was opened, and they compare with the savings withdrawal slips.

(Testimony of Benjamin Baizer.)

A. I imagine they would be at the Central Storage vaults. We might be able to get them.

The Court: You wouldn't have them at your branch? [67]

The Witness: No.

Q. (By Mr. Robnett): Did you have these at your branch? A. Yes, sir.

Q. Those two were the only ones you had there?

A. I couldn't answer that. We only looked for the years specified in the subpoena.

Q. I see. That was a subpoena by the government, wasn't it? A. That is correct.

Q. I am going to show you——

The Court: Let's mark it for identification A, photostatic copy of previous ledger sheet, I suppose?

Mr. Robnett: Yes.

(The document referred to was marked Defendant's Exhibit A, for identification.)

Q. (By Mr. Robnett): I want to show you Exhibit A, consisting of six pages photostated, and ask you if you will examine that.

Do you know what that is?

A. It looks like a photostatic copy of the ledger card of the savings account number 747 of Sam Ormont.

Q. That is the same account that you have identified Exhibits 11 and 12?

A. The last two sheets of those photostats are identical with the ones that I brought with me. [68]

(Testimony of Benjamin Baizer.)

Q. And the other sheets precede that, those two sheets which you have just identified, 11 and 12?

A. That is correct.

Mr. Strong: I object to that on the ground the originals are available. I have never seen the originals or the photostats and don't know, as a matter of fact, if those are or are not exact duplicates.

The Court: He is asking the witness. Can you tell whether those are?

The Witness: Yes, I can, because the signature —when the account is opened the signature is usually taken on the signature card and on the ledger card, and on the original ledger card on the first page the signature appears. Then there is a continuation right with the balances from each sheet to the next one.

The Court: So that in the regular course of the business of your bank you could say that that is his complete record of ledger cards?

The Witness: That's right.

The Court: You are entitled to have the originals if you want them.

Mr. Strong: Maybe we can talk it over during recess, because I haven't seen them, and if they are photostats I don't need the originals.

Mr. Kosdon: I will present counsel with a copy.

The Court: He will want to check that copy of the photostats with this copy of the photostats, and then check with the originals. That will make more work.

(Testimony of Benjamin Baizer.)

Mr. Strong: That is what will come from not bringing the originals.

Mr. Robnett: I am going to offer this in evidence, if the court please.

If it is going to become necessary for us to get the originals I want to know it now.

The Court: They may be marked for identification, and I will reserve ruling on the government objection that there is no proper foundation laid until after recess when he may withdraw his objection on that ground.

Mr. Robnett: All right.

The Court: Any further questions of this witness?

Mr. Robnett: No further questions.

The Court: You will remain until after the recess. Next witness.

Mr. Strong: Mr. McClung. [70]

JAMES E. MCCLUNG

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: James E. McClung.

The Clerk: Your address?

The Witness: Home address, 1435 West 67th Street, Los Angeles.

(Testimony of James E. McClung.)

Direct Examination

By Mr. Strong:

Q. What is your occupation, sir?

A. I am chief clerk, Security First National Bank, Huntington Park Branch.

Q. Do you have custody of any of the records of the bank?

A. You mean at the bank.

Q. Yes.

A. Well, I can get to them at any time, yes.

Q. They are under your supervision and your direction, the work done under you?

A. Any employee can get to the records. They are filed in our vault.

Q. Have you been subpoenaed to bring here certain records of the bank, Security First National Bank of Los Angeles on Pacific Boulevard? [71]

A. Yes.

The Court: Were you designated and authorized by the bank to produce those records?

The Witness: Yes. The subpoena has my name on it.

Q. (By Mr. Strong): Have you got the records there? A. Yes.

Q. You can put away the subpoena. I won't need that.

Mr. Strong: May I have these documents marked for identification, your Honor? I will try to clip a few together, if possible.

The Court: Has the defendant seen these documents?

(Testimony of James E. McClung.)

Mr. Strong: I have never seen them either. Nobody has.

The Court: All right. We will have a short recess or a recess long enough for the defendants to examine those documents and for you to consult with Mr. Robnett.

Remember the admonition not to discuss this case among yourselves or with any other person, nor to form or express any opinion concerning it until it is finally submitted to you.

(A recess was taken.)

The Court: The record will show each of the jurors present and the defendants present in person and by counsel.

In connection with Mr. Allen's proffered testimony were you able to come to some decision?

Mr. Strong: We have saved the trouble of everybody [72] going upstairs and carrying records now.

Counsel has agreed we can stipulate, subject to correction if there are a few dollars one way or the other, that the income tax paid for the income which was reported on the income tax return, which is in evidence, by Mr. Ormont, for the calendar year 1944, was the sum of \$3625.58. Is that right?

Mr. Robnett: The amount is shown on the return.

The Court: Your stipulation is that the amounts paid are the amounts shown on the returns.

Mr. Robnett: Yes.

(Testimony of James E. McClung.)

Mr. Strong: Yes. And those are the amounts shown in the indictment, is that correct?

Mr. Robnett: Yes.

Mr. Strong: Same stipulation as to Mr. Himmelfarb, the amount of income tax shown as due for the calendar year 1944 shown on the return is the amount paid.

Mr. Katz: The amount paid in connection with that return, so stipulated.

The Court: Mr. Allen may be excused.

Mr. Strong: And that the amount shown on the return of Ruth Himmelfarb to have been paid was the amount which was paid in connection with that return?

Mr. Katz: Yes.

Mr. Robnett: We are not bound by their stipulation on [73] those things. We are not stipulating to that, because we know nothing about it.

Mr. Strong: I understand that. I think the record is clear.

The Court: At the present time these are admitted only as against the respective defendants as heretofore indicated. In the event they are connected, however, I don't think that the government should be put to the trouble of reproving something that is stipulated to.

Mr. Katz: No, your Honor, that is not the purpose, nor the intention, but the thing we have in mind is this: that each defendant presently makes a stipulation for himself. Because until such time as it is proven otherwise we are not in a position to do anything else.

The Court: Very well.

(Testimony of James E. McClung.)

Mr. Strong: May we have that understanding with respect to the defendant Sam Ormont? Is that right?

Mr. Robnett: That is correct.

The Court: That is the ruling that the court has made. They are now admissible as against the respective defendants that have been heretofore indicated, which I won't repeat.

Mr. Baizer, you had some matters concerning him, and he might wish to be excused.

Mr. Strong: He is working on something and he doesn't mind staying a few minutes. May we proceed with this witness? [74]

The Court: All right.

Q. (By Mr. Strong): Are these the records you produced pursuant to a subpoena?

A. That's right.

The Court: Counsel will excuse me for a few moments. We will have a short recess. You may remain in your seats.

(A short recess was taken.) [75]

The Court: The jury is present, also the defendants and their counsel. Proceed.

Q. (My Mr. Strong): I show you Government's Exhibits 13, 14 and 15 for identification, and ask you whether these are the official records of the Security First National Bank, Huntington Park Branch, which you were subpoenaed to produce here.

A. (Examining documents) That is right.

Q. Would you state briefly what they are, taking them by number?

(Testimony of James E. McClung.)

A. No. 13 is the original signature card on this account in the name of Sam Ormont. The record here shows it was opened in 1932.

No. 14 is 13 original deposits. Do you wish the amounts on each one of them?

Q. No; just deposits slips?

A. Original deposit tickets, yes, made out in Sam Ormont's writing.

Q. And those deposit tickets represent deposits made in the due course of business of your bank?

A. That is right.

Q. Go ahead.

A. Then we have five original full ledger sheets, commercial account, in the name of Sam Ormont for the period asked for in the subpoena. [76]

Q. You mean there are some more cards?

The Court: What period is that?

The Witness: For 1942, '43, '44 and January of '45.

The Court: Very well.

Q. (By Mr. Strong): I show you this document which is marked Government's Exhibit No. 20, is that one of the records too?

A. That is right.

The Court: Government's Exhibit 20?

Mr. Strong: For identification.

The Court: How did you get from 15 to 20?

Mr. Strong: We marked a number of them during the recess for purposes of identification.

The Court: Very well.

(Testimony of James E. McClung.)

The Witness: This is the original deposit ticket on account No. 224808, in the name of Sam Ormont, dated May 1, 1942.

Q. (By Mr. Strong): Were the deposits made as shown in the due course of business at your bank?

A. Yes. That is the original record.

Q. Here is Government's Exhibit 19. State what that is.

A. That is a withdrawal ticket on the same savings account signed by Sam Ormont dated July 17, 1943. It is the original record. It is the only record. [77]

Q. So far as you know, the withdrawal was or was not made?

A. It was made; yes. I have the ledger card here to show.

Q. Government's Exhibit 18?

A. This is a withdrawal ticket on the same account, dated January 10, '42. It is an original. It is cancelled.

Q. Was that withdrawal made also as shown by the document itself? A. That is right.

Q. This is 17 and 16, are they part of your records?

A. Yes. Here is the savings account signature card on the account, opened January of 1937.

Q. Whose account?

A. Sam Ormont. It is the original. It is the only signature card we have on that.

No. 16 is the original savings ledger card to which all withdrawals and deposits are posted. It is the

(Testimony of James E. McClung.)

original of account 224808, Sam Ormont, and shows all the withdrawals and deposits.

Q. These are the only documents you were subpoenaed to produce, is that right?

A. I believe that's it. I have not checked them to see. That is all I brought; yes.

Mr. Strong: That is all. [78]

The Court: Cross-examine?

Mr. Robnett: Yes, your Honor.

Cross-Examination

By Mr. Robnett:

Q. Let me understand your name again, please.

A. McClung; James E. McClung.

Q. Mr. McClung, I am going to show you first Exhibits 13, 14 and 15 for identification, I guess they are—I don't believe they have been offered in evidence?

The Court: No, they haven't been offered in evidence.

Q. (By Mr. Robnett): I ask you if that is the complete bank record of that account of Sam Ormont from the beginning to the end.

A. It calls here in your subpoena for a set date.

Q. No, I am asking you a question. That isn't my subpoena.

A. Let me look at it first. I don't know when it was opened. Yes, I do. Do you have the commercial signature card here?

(The document referred to was passed to the witness.)

(Testimony of James E. McClung.)

The Witness: March 15, 1932.

Q. (By Mr. Robnett): That is when it was opened?

A. That is right. And this only goes back to '41.

Q. Could you produce at the next hearing of the court [79] the entire record of that account in connection with this same ledger?

A. Yes, in about five days.

Q. About five days? A. Yes.

The Court: Why five days.

The Witness: Well, we have to order them through our warehouse. The normal procedure takes' about five days.

The Court: Couldn't you hasten them a little bit?

The Witness: I haven't gone out to the warehouse and dug them out myself, I wouldn't know where to find them, but I guess it could be done if you insist on it. [80]

Q. (By Mr. Robnett): May I ask you is it a question of time in finding them? Are they mixed up?

A. No. We keep our records, we have our regular channels through which we order them. We fill out a requisition and send it in, and they look them up and send them back to us. In fact, I ordered some of these from the warehouse. We only keep current records out at the branch, back about two years. We don't have room out there to carry them all.

(Testimony of James E. McClung.)

Q. Will you kindly order those, rush order, when you return to the bank, please?

A. Yes.

The Court: If you desire them, I will direct the witness to produce them. They won't be needed before probably Wednesday morning, next Wednesday morning.

Mr. Robnett: Yes.

The Court: That will be time enough.

Mr. Robnett: Will you return with them at that time, then?

The Witness: Yes.

The Court: You understand now what you are to produce? The entire ledger records.

The Witness: That is just on his commercial account?

Mr. Robnett: I am going to ask him the same on the other accounts. I think maybe you have it here.

The Witness: I believe we have on that account.

Mr. Robnett: Isn't that when it was opened?

Mr. Kosdon: May I interrupt for a minute? Mr. Robnett, will you have the witness also bring in the ledger cards pertaining to the Acme Meat Company?

The Court: Are they kept there? Do you recall that account?

The Witness: Yes.

The Court: All right. The complete ledger cards of the Acme Meat Company: commercial and savings?

Mr. Kosdon: Just commercial.

(Testimony of James E. McClung.)

The Court: Since the time it was opened up to date.

Mr. Robnett: And of each of these accounts (indicating), both the commercial and the savings.

The Witness: That is next Wednesday morning at 10:00 o'clock.

The Court: Yes.

Q. (By Mr. Robnett): By the way, this account, Exhibit 16, is that the savings account?

A. That's right.

Q. Is that the complete savings account until it was closed up?

A. Well, now, I brought the ledger cards showing all the entries, the signature card, that is the only one; but I have not brought all of the deposits since the account opened. In fact, that goes back to 1937. [82]

Q. You mean you have not brought the deposit slips? A. No, not for 1937.

The Court: He brought the ledger, didn't he? You have the ledger account since '37? The ledger account is what you want?

Mr. Robnett: It seems to be of value to us to have the deposit slips, if he could bring them.

The Court: That is the savings account only you want the deposit slips?

Mr. Robnett: Yes. He has the ledger sheet here. This ledger sheet is closed out.

The Court: What do you want of the Acme Meat Company? Just the ledger sheet?

(Testimony of James E. McClung.)

Mr. Robnett: I want everything pertaining to the account, ledger sheets and the deposit slips.

The Court: Ledger sheet, signature card and the deposit slips for the Acme Meat Company?

Mr. Robnett: Yes.

The Witness: They may have, maybe, a deposit of two a day for seven years, and that is a job. If they have to have them, I can get them. If they don't have to have them, it is a tremendous job. You go in a warehouse, you pick out a group of deposit tickets and take one out and put the rest back, for seven years, that is a job, believe me.

The Court: A savings account is not so bad?

The Witness: It is the same way, your Honor. They are filed day by day.

The Court: There are not so many deposits?

The Witness: About 20 on that card covering from '37 up to '43. I know the bank will take the responsibility that these original debits are posted to the correct account.

Mr. Robnett: As to the Acme Meat Company, since there are so many deposit slips you don't need to bring them.

The Witness: I am to bring the entire ledger and signature card on Acme Meat, and on this account here back to where the account opened?

The Court: The commercial account.

The Witness: Yes.

The Court: They want the deposit slips on the savings account.

Mr. Robnett: Yes, correct.

(Testimony of James E. McClung.)

The Witness: Yes, back to '37.

The Court: To the time it began.

Cross-examination?

Mr. Katz: No, your Honor. My understandinng is that all of this testimony was going in, until it is changed, was going in as against the other defendant.

The Court: That is right. The witness may be excused to return next Wednesday at 10:00 o'clock.

Mr. Strong: Surely. [84]

The Court: Next witness.

Mr. Strong: Mr. Jehl.

ALBERT H. JEHL

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Albert H. Jehl.

The Clerk: Your address?

The Witness: 4808 Victoria Avenue, Los Angeles.

Direct Examination

By Mr. Strong:

Q. Mr. Jehl, what is your occupation?

A. Junior vice-president and manager of the Citizens National Trust and Savings Bank.

Q. Have you produced with you here today, pursuant to subpoena directed to the Citizens Na-

(Testimony of Albert H. Jehl.)

tional Trust and Savings Association, certain documents of the bank, books and record?

A. I have.

Q. Do you have them there? A. I have.

Q. Will you look at those documents before you and state whether they are part of the official records of the bank kept in the due course of business?

A. They are.

Q. Those are Government's Exhibits. for identification, [85] Nos. 21, 22, 23 and 24, is that right?

A. That's right.

Q. Will you kindly state what No. 21 is?

A. 21—

The Court: Have you seen these?

Mr. Kosdon: I don't think so.

Mr. Strong: Yes, these are the ones I have shown them before.

Mr. Robnett: All right. If he says we have seen them, I guess we have.

Mr. Strong: That is what they were looking at.

The Witness: This is the signature card of the Acme Meat Company showing Sam Ormont as sole owner, together with a sole ownership certificate of business being carried on under the fictitious name of Acme Meat Company, executed by Sam Ormont. Card dated 4/16/1943, the date of opening. Showing closed out as of February 10, 1947.

Another signature card of the Acme Meat Company, this is No. 22, Acme Meat Company payroll account, executed by Sam Ormont, dated March 3, 1945, and showing as closed out March 10, 1947.

(Testimony of Albert H. Jehl.)

No. 23 is commercial deposit slips as of May 21, 1943, October 9, 1943, January 25, 1944, March 29, 1944, May 25, 1944, June 3, 1944, June 10, 1944, June 28, 1944, July 12, 1944, September 23, 1944, November 11, 1944; all in the name of Acme Meat Company.

Q. Those are deposit slips?

A. Those are commercial deposit slips.

Q. Do you know if the deposits were made as shown? A. That is right.

The Court: In the regular and usual course of business, deposits would have been made as reflected by those accounts?

The Witness: That is right, sir.

Exhibit 24 are commercial ledger sheets of the Acme Meat Company, starting with an opening of April 16, 1943, and running through those years to December 29, 1944.

The Court: Was the account closed at that time?

The Witness: No, sir. The account was closed on February 10, 1947.

Mr. Strong: That is all.

The Court: Cross-examine.

Cross-Examination

By Mr. Robnett:

Q. Is that the complete record of that account from the beginning to the end?

A. From the beginning until December of 1944.

Q. Q. Is that when it was closed out? [87]

A. No, it wasn't closed until February of 1947.

(Testimony of Albert H. Jehl.)

Q. Then there are—

A. Those are the dates that the government subpoenaed, however.

Q. Yes. In any event, if we should want the other sheets up to date, would it take you very long to get them? I don't know that we do.

A. The sheets wouldn't take long no, but the deposit slips would be a lot of trouble. But we have the sheets at the branch.

Q. We could telephone you and get them?

A. Any time; yes, sir.

Mr. Robnett: That is all.

Mr. Strong: Just one more question.

Redirect Examination

By Mr. Strong:

Q. Did you bring the loan liability ledger sheets for the years 1942, '43 and '44?

A. There are none.

Q. There are none? A. None.

Q. Did you have any applications for loans and financial statements submitted by Sam Ormont or Phillip Himmelfarb? [88]

A. No, we did not.

Q. That is the reason you didn't bring them?

A. That is right.

Mr. Strong: That is all.

The Court: You may be excused.

. (Witness excused.)

The Court: Next witness.

Mr. Strong: Mr. Pingree.

HUGH R. PINGREE

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows:

Mr. Strong: May I call another witness before this one so that these documents can be marked?

The Court: Let's get the witnesses sworn first.

The Clerk: Your name?

The Witness: Hugh R. Pingree; P-i-n-g-r-e-e.

The Clerk: Your address?

The Witness: 3117 Via Breve, Montebello.

The Court: You may step down for a moment.

We are going to recess today at 4:00 o'clock so if you have any more of these record witnesses you better get them first.

Mr. Strong: That is what we are doing so that they can go home. [89]

Mr. Miller.

THOMAS G. MILLER

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: May I have your name?

The Witness: Thomas G. Miller.

The Clerk: Your address?

The Witness 126 South Primrose Avenue, Alhambra.

Direct Examination:

By Mr. Strong:

Q. What is your occupation, sir?

(Testimony of Thomas G. Miller.)

A. Office manager of Merrill, Lynch, Pierce, Fenner & Beane, members of the New York Stock Exchange.

The Court: What was that name?

The Witness: Merrill, Lynch, Pierce, Fenner & Beans, know as "We, the People."

The Court: We, the People?

The Witness: Yes, your Honor.

Q. (By Mr. Strong): Have you been subpoenaed or has Merrill, Lynch, Fenner and Beane been subpoenaed to produce certain documents which you brought with you here today?

A. Yes, we have.

Q. I will show you this group of documents that we [90] have already marked for identification and ask you whether these are the documents which you have brought pursuant to the government's subpoena.

The Court: Their numbers?

Mr. Strong: Nos. 26 through 31 inclusive for identification.

The Witness: (Examining documents) Yes, they are Mr. Strong.

The Court: The defendants have seen these?

Mr. Kosdon: We have looked at them.

Q. (By Mr. Strong): Would you take them one by one and state very briefly what they are.

A. Exhibit 26 is the ledger record of the account of Sam Ormont from January 1, 1941, through May 31, 1941.

(Testimony of Thomas G. Miller.)

Exhibit 27 is the ledger page representing the account of Sam Ormont from June 28, 1941, through December 31, 1941.

Exhibit 28 is the ledger record of Sam Ormont from January 1, 1942, through December 31, 1942.

Exhibit 20 is the ledger record of the account of Sam Ormont from February 2, 1943, through December 31, 1943.

Exhibit 30 is the record of January, 1945 and February, 1945 of Sam Ormont.

Exhibit 31 is the ledger record of the account of Sam Ormont from January 1944 through December 1944. [91]

Q. Those are the records kept by your concern in the due course of transacting their business?

A. Yes, they are.

Q. I show you Government's Exhibit 25 for identification and ask you if this is a photostatic copy which you have brought with you here today pursuant to the subpoena.

A. Yes, that is correct.

Mr. Strong: Will counsel stipulate that we can use this photostat in lieu of the original card, that is, Government's Exhibit 25 for identification, the signature card?

Mr. Robnett: Yes.

The Court: What is it?

Mr. Katz: That is a matter I am not concerned with, but it is still my understanding that until such time as you indicate that you are proceeding against

(Testimony of Thomas G. Miller.)

the defendant Himmelfarb you are proceeding against the defendant Sam Ormont.

Mr. Strong: Yes.

Q. Would you state what that is first.

A. This is the signature card and account card of Sam S. Ormont signed January 2, 1941.

Mr. Strong: I am simply asking, with reference to the use of the photostat rather than the original so that in the event I offer it as against the defendant Himmelfarb that we don't have to go running around to get the original.

Mr. Katz: That is so stipulated. That is satisfactory, [92] if it ever comes in against the defendant Himmelfarb the use of a photostate will be satisfactory.

Mr. Strong: Thank you. That is all.

The Court: Any cross-examination?

Mr. Robnett: No questions.

Mr. Katz: No, your Honor.

The Court: You are excused:

(Witness excused.) [93]

The Court: Do you want Mr. Pingree back on the stand?

Mr. Strong: Please.

HUGH R. PINGREE

called as a witness by and in behalf of the government, having been previously duly sworn, was examined and testified as follows:

The Court: You were sworn a moment ago?

The Witness: Yes.

(Testimony of Hugh R. Pingree.)

Mr. Strong: May I in the meanwhile pass these exhibits 1, 2, 3 and 4 in evidence, to the jury while we are putting these other documents in?

The Court: No:

Direct Examination

By Mr. Strong:

Q. Mr. Pingree, what is your occupation?

A. I am manager, Bank of America, First and Chicago Branch, Los Angeles.

Q. Have you pursuant to a subpoena issued directed to the Bank of America at your branch brought certain records with you of the Bank of America? A. I have.

Q. I show you these documents, Government's Exhibits 32 through 36 for identification and ask you whether these are the records which you have brought with you.

A. That is correct. Of course those are copies of the [94] original that I brought also.

The Court: Those are photostats?

The Witness: Yes.

Mr. Strong: The witness is referring to Government's Exhibits 32, 33, 34 and 35. The originals are in the courtroom and I understand from counsel that we may use in this case the photostats in lieu of the originals. Is that correct?

Mr. Katz: Now I think you are proceeding on matters as against the defendant Himmelfarb, is that correct?

Mr. Strong: That is right.

(Testimony of Hugh R. Pingree.)

Mr. Katz: The use of photostats is satisfactory. There is no objection.

The Court: As to these matters?

Mr. Strong: As to these exhibits?

Mr. Katz: Yes, as to these exhibits that we are referring to.

Mr. Robnett: I won't object on the ground that they are photostats. You are not offering them as against my client now, are you?

Mr. Strong: I am not offering them now.

Mr. Robnett: Will this examination pertain to my client?

Mr. Strong: No, it is just pertaining to the documents. But I understand that in any event, if we do offer them you will not object on the ground that they are photostats?

Mr. Robnett: Not at all. [95]

Mr. Strong: Thank you.

The Court: Let me see, you haven't offered in evidence Exhibits Nos. 7 to 31 yet.

Mr. Strong: I have not offered anything beyond Exhibit 5.

The Court: In view of the fact that you are moving over to a different defendant, should you not make your offer at this time?

Mr. Strong: I will offer them in evidence. I offer in evidence Government's Exhibits 6 through 36 inclusive.

The Court: Nos 6 to 31, because these others involve something else.

Mr. Robnett: Pardon me just a moment.

(Conference between counsel.)

(Testimony of Hugh R. Pingree.)

Mr. Strong: And at this time I am offering them only as against the defendant whose account it is.

The Court: Sam Ormont?

Mr. Strong: Yes.

Mr. Robnett: How many are you offering?

The Court: Nos. 7 to 31 inclusive.

Mr. Robnett: As to 26 to 31 inclusive that have just been identified there by the witness, as to those I interpose an objection on the ground that they are incompetent, irrelevant and immaterial, do not tend to prove any issues in this case to show any taxable income during any period or time. [96]

As to the others, I believe they are all bank records, practically all, and they only show bank accounts, and I want to interpose the formal objection that they do not show any taxable income.

The Court: That they are incompetent, irrelevant and immaterial?

Mr. Robnett: That they are incompetent, irrelevant and immaterial for that reason, unless they are connected up and shown to be income.

The Court: They will be admitted subject to the motion to strike in the event they are not connected up, and admitted only as against the defendant Sam Ormont and not as against the defendant Phillip Himmelfarb.

(The documents referred to were received in evidence and marked Government's Exhibits 7 to 31 inclusive.)

Mr. Strong: No. 6 is still here. I haven't offered it yet.

(Testimony of Hugh R. Pingree.)

The Court: I don't know what No. 6 is.

Mr. Strong: No. 6 is an income tax return. I will offer it in evidence just to keep this whole thing so we won't have to go looking for No. 6 later on.

Mr. Robnett: May I see whose it is?

(Counsel exhibiting document.)

Mr. Strong: I offer 6 with everyone's acquiescence. [97]

(The document referred to was received in evidence and marked Government's Exhibit No. 6.)

Q. (By Mr. Strong): Now, Mr. Pingree, would you please state briefly what these are by number?

A. Exhibit 32 is a photostate of the original signature card covering the commercial account of Phillip Himmelfarab opened on May 14 of '42.

Exhibit 35 is a photostatic copy of cashier's check No. 3305484, dated January 20, '45, payable to Acme Meat Company in the amount of \$3150.

Q. Was this paid, as far as you know?

A. Yes, showing it was paid on May 24 of '45.

Mr. Katz: If the Court please, I am going to move to strike the statement of the witness with respect to what the document shows. The document is the best evidence of what it shows, and I am going to move to strike it upon the further ground that it is in a date subsequent to the time that is here involved for the present purposes at least until such time as a later date is brought into issue. [98]

The Court: That is Exhibit 32?

Mr. Strong: That is the check, 32.

(Testimony of Hugh R. Pingree.)

The Witness: 35, isn't it?

Mr. Strong: We will connect it up, your Honor.

The Court: Let me see it.

(Document handed to the court.)

The Court: You mean 32, 33 and 34 have something to do with this?

Mr. Strong: I don't understand you.

The Court: You said you would connect it up.

Mr. Strong: 35. All the others have something to do with it.

The Court: Will you connect 32, 33 and 34 with 35?

Mr. Strong: Yes.

The Court: Then let's start with 32, 33 and 34.

The Witness: That was out of order. I didn't notice it.

The Court: I will reserve ruling on the objection.

Mr. Strong: As to which one? Just the one, 35?

The Court: That is the only one that the objection has been made on so far.

Q. (By Mr. Strong:) Go ahead.

The Court: Tell us what 32, 33, 34 and 35 and 36 are. What are they?

The Witness: I have told you on 32. Should I repeat? [99]

The Court: I missed it.

The Witness: That is a photostatic copy of a signature card executed by Himmelfarb, Commercial Account, showing the opening date May 14 of '42. That is Exhibit 32.

(Testimony of Hugh R. Pingree.)

The Court: Very well.

The Witness: Exhibit 33 is a photostatic copy of a commercial deposit dated May 26 of '45.

Mr. Katz: Just a minute. If the court please, I am going to object to any further statement with reference to a matter that is dated beyond the year that is before this court in this matter. It is not in the issue. The record is, in any event, the best evidence of what it contains.

Mr. Strong: We will tie it up, your Honor.

The Court: Finish your statement. Dated when?

The Witness: May 26, 1945.

The Court: All right. I will reserve ruling on that.

The Witness: Exhibit 34 is a photostatic copy of an original application for cashier's check No. 5484, dated—the date of this particular document January 20 of '45. Check payable to the Acme Meat Company.

Mr. Katz: Just a minute. If the court please, I am going to make the same objection with respect to that document, which is passing beyond the date that is here before the court.

Mr. Strong: We will connect it up, your Honor.

Mr. Katz: On the same ground, the record is the best evidence.

The Court: I will reserve ruling on it. Continue. 35 is the cashier's check what date?

The Witness: January 20, 1945.

The Court: What is 36?

(Testimony of Hugh R. Pingree.)

The Witness: 36 are certain copies of the ledger sheets of Phillip Himmelfarb, covering the periods from December 24, 1943 to and including January 23 of 1946.

Mr. Katz: Same objection, if the court please, with reference to the ledger cards at this time, and until the later dates are placed in issue, with respect to a date beyond the end of the year '44.

The Court: Are you offering this in evidence?

Mr. Strong: I am offering all of them, your Honor.

The Court: 32 is admitted in evidence; 33 is admitted in evidence; 34 is admitted in evidence; 35 is admitted in evidence; 36 is admitted in evidence in so far as the date of March 15, 1945 is concerned. Beyond that date it will be marked for identification until further foundation is laid.

Cross-examination?

I take it you are through?

Mr. Strong: Yes. I just have these documents.

Cross-Examination

By Mr. Katz:

Q. Mr. Pingree, with reference to Exhibit 36, that account, as I understand it, was opened in the year 1942, is that correct?

A. That's correct.

Q. And the ledger sheets that you have, do they commence as of the date of the opening of that account?

A. No; they commence as of December 24 of '43.

(Testimony of Hugh R. Pingree.)

Q. If the request is made of you to produce the ledger sheets from the date of the opening of the account to the date at which these ledger sheets begin, can you do that?

A. Yes, we can do that. It would be a matter of about six months, approximately, we could do that in a short time.

Q. When you say "six" months you mean you are talking about it covers a six months period and you can do it quickly? A. Yes.

Q. It wouldn't take you six months to get those records together? A. No, that's right.

Q. Will you make those available to us?

A. Yes.

The Court: On order of the court I take it you would?

The Witness: Yes.

The Court: When do you want him back—next Wednesday at 10:00 o'clock?

Mr. Katz: I don't believe I will need him before that time, your Honor.

The Court: Very well. Next Wednesday at 10:00 o'clock you come back with those additional records. In the meantime you may be excused.

Any other witnesses this afternoon?

Mr. Strong: Are there any other witnesses with records? That will be all this afternoon.

The Court: You mean with bank records.

Mr. Strong: Any other kind of records. I don't mean criminal records.

The Court: Very well.

(Testimony of Hugh R. Pingree.)

I think we can proceed with this matter Monday afternoon. Monday morning is law and motion day. I will be through by noon.

Recess until 2:00 o'clock Monday afternoon. You remember the admonition, and all witnesses are directed to return to this court room on that date and hour.

(Whereupon, at 4:00 o'clock p.m., Friday, May 23, 1947, an adjournment was taken until Monday, May 26, 1947, at 2:00 o'clock p.m.)

Los Angeles, California, May 26, 1947

2:00 o'Clock P.M.

The Court: Ex parte?

The Clerk: I believe not, your Honor.

The Court: Usual stipulation?

Mr. Strong: So stipulated.

Mr. Katz: So stipulated, your Honor.

Mr. Robnett: Yes.

Mr. Strong: That the jury is present and the defendants are in court.

The Court: Call your witness:

Mr. Strong: Mr. Baizer.

BENJAMIN BAIZER

recalled as a witness by and in behalf of the Government, having been previously duly sworn, was examined and testified as follows:

The Clerk: You have been sworn before?

The Witness: Yes.

(Testimony of Mr. Baizer.)

The Clerk: And your name again?

The Witness: Benjamin Baizer, B-a-i-z-e-r.

Direct Examination

By Mr. Strong:

Q. Mr. Baizer, you were a witness in this case before and you were sworn?

A. That is correct. [107]

Q. You were asked to bring certain additional records of the bank?

A. I have them here.

Q. May I have them, please?

A. (Producing documents) Those are the originals.

Mr. Strong: May I have this group of documents marked as one exhibit for identification, your Honor?

The Clerk. No. 37.

(The documents referred to were marked Government's Exhibit No. 37 for identification.)

Mr. Strong: I will show them to the defendants, your Honor.

(Exhibiting documents to counsel.)

Q. (By Mr. Strong): I show you Government's Exhibit 37 for identification. Will you please state what these are?

A. These are savings deposit tickets to the savings account of Sam Ormont, No. 747. One of them is dated February 4, 1942, in the amount of \$550—

(Testimony of Mr. Baizer.)

Q. Whatever they show on their face. They are savings deposit tickets?

A. That is right.

Q. For the savings account?

A. Savings deposit tickets to the account.

Mr. Katz: If the Court please, at this time I wish to [108] renew the objection heretofore made, and I would like, if possible, to have the same understanding.

Mr. Strong: Same understanding.

Mr. Katz: That is, that these matters are inadmissible as against the defendant Himmelfarb, and it will be understood that the objection made to each question and the ruling of the Court be the same as against each question and each witness until Mr. Strong indicates that he is proceeding against the defendant Himmelfarb.

The Court: I doubt if the Government would be willing to concede an understanding to that effect, but I think that they would concede an understanding to the effect that that is the basis of your objection.

Mr. Katz: Yes, your Honor.

The Court: And that I will make the same ruling.

Mr. Strong: That is right.

The Court: All right.

Mr. Katz: Thank you.

Q. (By Mr. Strong): Now do you know whether the deposits in the sums indicated by those slips were actually made?

A. Yes, they were.

(Testimony of Mr. Baizer.)

Mr. Strong: I offer these documents in evidence, your Honor.

Mr. Robnett: Our objection to those is that they are incompetent, irrelevant and immaterial at this time unless they are connected up and shown to be income.

The Court: Overruled. Admitted as to Sam Ormont only.

(The documents referred to were received in evidence and marked Government's Exhibit No. 37.)

Mr. Strong: No further questions.

The Court: Any questions?

Mr. Robnett: No questions.

The Court: This witness was going to produce some other documents.

Mr. Strong: That was Wednesday.

The Witness: Not me. I think you are referring to Mr. Pingree.

Mr. Strong: Some of the bankers who were here said that they would bring the documents requested by the defendants on Wednesday.

The Court: Your ledger sheets were from the opening of the account?

The Witness: No, your Honor, just from 1942 on. They were not requested.

The Court: They wanted them from the opening of the account.

(Testimony of Mr. Baizer.)

Mr. Robnett: Your Honor, I believe that the record will show that I have an exhibit which is a photostatic copy which the witness testified to.

The Court: And that it was correct. [110]

Mr. Robnett: And I am going to ask counsel for the prosecution at this time, while the witness is still here, if he is still going to raise the objection that they are purely photostats.

Mr. Strong: No, I will take Mr. Robnett's word that these are representative.

The Court: The witness testified that they were true copies.

Mr. Robnett: That is correct, but there was an objection before that they were not the originals.

The Court: The witness may be excused then.

(Witness excused.)

Mr. Robnett: I offer these in evidence at this time. That will be Defendants' Exhibit A.

The Court: As part of the cross examination?

Mr. Robnett: Yes. I cross examined him the other day.

The Court: Very well. They are admitted in evidence as part of the cross examination of the witness Baizer.

(The documents referred to were received in evidence and marked Defendants' Exhibit A.) [111]

ERNEST LINK

a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name for the record?

The Witness: Ernest Link.

The Clerk: What is your address, Mr. Link?

The Witness: 333 South Hope Street.

Direct Examination

By Mr. Strong:

Q. Mr. Link, are you acquainted with the defendant Sam Ormont? A. Yes, I am.

A. Are you acquainted with the defendant Phillip Himmelfarb? A. Yes.

Q. How long have you known Mr. Ormont?

A. Since 1931.

Q. And Mr. Himmelfarb?

A. Since 1944.

Q. Were you employed in any business capacity with Mr. Ormont?

A. I was his bookkeeper.

Q. When? A. From 1931 until 1945.

Q. When in 1945? [112]

A. Until the middle of April, 1945.

Q. Would you state what your duties were with reference to your being bookkeeper for Mr. Ormont?

A. I was in full charge of his books. That included checking his bills, entering bills, sending out statements, and making monthly profit and loss calculations.

(Testimony of Ernest Link.)

Q. That was during what period?

A. During all of that period from 1931 until 1945.

Q. During that period, so far as you know, what business was Mr. Ormont engaged in?

A. In the buying of livestock, slaughtering of livestock and selling meat products from the slaughterhouse, livestock.

Q. Was there a firm name under which Mr. Ormont operated.

A. Yes, it was known as the Acme Meat Company.

Q. Was this in that period from 1931 to 1945?

A. Yes.

Q. You were employed in the office then of this Acme Meat Company?

A. It was only a spare time job. I would do that at home.

Q. But you had the full duties of a bookkeeper on his books? A. Yes. [113]

Q. With reference to purchases, what sort of entries did you make in that connection?

A. Those entries for purchases were made solely from the check record. That is, the checks would be made out by Mr. Ormont. I would enter them through my check records, and charge them to purchases.

Q. You are talking about purchases by Mr. Ormont?

A. By Mr. Ormont, or whoever was his partner. There was at one time a Mr. Salter.

(Testimony of Ernest Link.)

Q. In other words, purchases by the Acme Meat Company?

A. Purchases by the Acme Meat Company.

Q. And sales made by the Acme Meat Company,—what sort of records, what sort of entries did you make?

A. I would enter sales in the sales record from the bills made out by Mr. Ormont, and they would be entered in their accounts receivable record, and statements would be made and sent to the customers.

Q. Did you prepare a set of books for Mr. Ormont, or did you find a set of books already in existence?

A. No, I started the first set of books for him.

Q. That was in 1931? A. Yes.

Q. Was there anybody else, so far as you know, who had anything to do with making bookkeeping entries in those books?

A. Only during vacation periods. [114]

Q. That's about how long a period during a given year?

A. There was one time, a period perhaps five or six months or seven months.

Q. When was that? A. 1939.

Q. And 1942, 1943 and 1944?

A. I was keeping the books.

Q. Did you have any assistance? A. No.

Q. You did all the work yourself?

A. Yes.

Q. Making the entries as to the sales by the Acme Meat Company, did you have access to the invoices?

(Testimony of Ernest Link.)

A. Yes, I checked the invoices. I checked all the extensions and the additions before I would enter them into the customer's accounts.

Q. Did you make the invoices?

A. No, I only checked the invoices.

Q. The record, the data on the invoices onto the books?

A. From the invoices into the books.

Q. Did you make any kind of a distinguishing mark on those invoices after you got through with each one?

A. Yes, I have a steady habit of making check marks on all the extensions I check.

Q. What was the purpose of that? [115]

A. To know that I checked them, and they were correct.

Q. So by examining an invoice you can tell, can you not, whether or not you had used that to make an entry into the books? A. Yes.

Q. Invoices which do not bear your check marks, I understand were not entered by you?

A. That is correct.

Q. Do you have the books for the Acme Meat Company for the year 1942, 1943 and 1943.

A. Do I have them?

Q. Yes. A. I had them.

Q. Do you have them now? A. No.

Q. Do you have access to them now?

A. No.

Q. So far as you know, where are those books?

A. They should be in the possession of the Acme Meat Company.

(Testimony of Ernest Link.)

Q. What was the practice of making invoices, so far as you know, by the Acme Meat Company, in connection with sales of Meat?

A. The customer would come to the Acme Meat Company. I have witnessed it many times,—and he would buy meat. [116] The meat would be weighed, and the weight and the price would be entered on a bill, which was made out to the customer, and the extensions were, in the case of cash sales, made directly on the spot, and I would check those later. And in case of open account sales, the extensions would be left open, and I would make the calculation, and enter the amount in the accounts receivable ledger.

Q. So far as you know, how many sets of books were there kept by the Acme Meat Company?

A. One set of books.

Q. When I say the Acme Meat Company, I mean Mr. Ormont. Is your answer still the same as to Mr. Ormont?

A. There was a period of partnership of Mr. Ormont with Mr. Salter. It was, I believe, from 1931 until, roughly, 1943.

Q. Regardless of who constituted the partnership, or the operation known as Acme Meat Company?

A. Sam Ormont and Frank Salter at that time.

Q. But the sales and purchases of the Acme Meat Company were then recorded by you in one set of books? A. Yes.

(Testimony of Ernest Link.)

Q. So far as you know there was just one set of books? A. Yes. [117]

Q. Did you ever see a second set of books dealing with the sales and purchases of the Acme Meat Company? A. No.

Q. That is, for the entire period from 1931 until you left in 1945? A. Yes.

Mr. Strong: May I have these documents marked, your Honor, as Government's Exhibit next in order for identification? I think one number would number be sufficient.

The Court: No. 38.

(The documents referred to were marked Government's Exhibit No. 38 for identification.)

The Court: When you said you carried out the extensions on invoices to open accounts, was the rate indicated on the invoice?

The Witness: Yes.

The Court: By the person who filled it out at the time of the original delivery or sale?

The Witness: Yes.

The Court: Those were in pencil, were they?

The Witness: Yes.

The Court: And all your calculations were made at the rate indicated?

The Witness: That is correct.

Q. (By Mr. Strong): Now may I show you a group of [118] invoices which are marked Government's Exhibit 38 for identification and ask you if you ever saw those before.

(Testimony of Ernest Link.)

Mr. Robnett: If the court please, in connection with these invoices I wish to make an objection that they are incompetent, irrelevant and immaterial, and should not be shown to the witness or any testimony admitted thereon. I have a matter that I would like to present to your Honor.

The Court: Out of the presence of the jury?

Mr. Robnett: Out of the presence of the jury.

The Court: Let me see the documents.

(The documents referred to were passed to the court.)

The Court: Mr. Strong, do these purport to cover a specific and a particular period?

Mr. Strong: 1942. That is count 4.

The Court: The whole year of 1942?

Mr. Strong: This is part of the testimony towards it; yes.

The Court: Your answer is, this is part of the testimony, yes. I am asking, are you offering these as all of the invoices for sales of meat by the defendant Ormont through the Acme Meat Company for the year 1942?

Mr. Strong: No, they are a specific type which I don't know whether your Honor wants me to discuss before hearing the motion or not.

The Court: They are a special type of invoice?

Mr. Strong: Yes. [119]

The Court: In other words, this is a group of invoices selected not at random from his 1942 file?

Mr. Strong: Not at random but for a specific purpose.

(Testimony of Ernest Link.)

The Court: But on the basis that each of these invoices possess a certain and a common characteristic different than the other invoices?

Mr. Strong: Yes, sir. Precisely.

The Court: Let me ask the witness a question.

From your work on the books for the Acme Meat Company, was most of their business an open account business or a large portion of it cash sales?

The Witness: As to the bulk of the figures, I can say quantity—

The Court: Quantity, pounds of meat, I suppose?

The Witness: Would have been open account.

The Court: Would have been open account. As to number of sales?

The Witness: If there were many small cash sales, they might sometimes outnumber the open account sales.

The Court: Can you proceed with something else with the examination of this witness? I dislike to have the jury running up and down the stairs any more than I have to.

Mr. Strong: I suppose, your Honor, from what I know of the testimony which will come forth from this witness in support [120] of the indictment that there will be similar objections, or objections along similar lines, so that it might not be a bad idea to dispose of them at the outset.

The Court: Do you have other exhibits of this nature which you wish to have marked for identification with this witness?

Mr. Strong: Just one more.

(Testimony of Ernest Link.)

The Court: In other words, if you can get all the exhibits you are going to use in with this witness, maybe we can wrap all the objections up at one time.

Mr. Strong: Very well.

The Clerk: No. 39.

(The document referred to was marked Government's Exhibit No. 39 for identification.)

The Court: That is another invoice?

Mr. Strong: That is another invoice.

I might ask him one or two more questions. I don't know whether I can save any time that way or not.

The Court: All right.

Mr. Strong: Is it all right to ask or not to ask?

The Court: You ask the question and then we will decide whether it is right or not. I cannot tell you in advance.

Q. (By Mr. Strong): Now in keeping the books for the Acme Meat Company and Mr. Ormont, did you ever have any discussions with Mr. [121] Ormont during 1942, 1943 or 1944 with reference to making any entries upon the books respecting the purchase of cattle? A. Yes.

Q. Did you have any such discussions with reference to entries which were—strike that.

Did you have any such discussions with Mr. Ormont with reference to entries which you declined to make?

A. I did not decline to make those entries, any entries.

(Testimony of Ernest Link.)

Q. Did you specifically have any discussions with Mr. Ormont during 1944 respecting the changing of record entries as to the cost price of cattle which he had purchased? A. Yes.

Q. When was that discussion had?

A. The latter part—

Q. If there was one or more.

A. The latter part of 1944.

Q. Who was present?

A. Approximately October, November or December.

Q. How many conversations of that kind did you have, approximately?

A. Three or four or five.

Q. About when was the first one held, do you recall?

A. Either in October or November.

Q. 1944? [122] A. 1944.

Q. Who was present?

A. Mr. Ormont and myself.

Q. Where was the conversation held?

A. In his office.

Q. Will you state the conversation?

Mr. Robnett: To which I object, on the ground it is incompetent, irrelevant and immaterial, if the Court please, and doesn't tend to prove any of the issues in this case, namely, the withholding of any income. This went to the matter of outgoing money, I assume, according to the questions.

Mr. Strong: Income for tax purposes depends on both, and also wilfulness. I don't want to discuss it further.

(Testimony of Ernest Link.)

The Court: I understand. The objection is overruled.

The Witness: Will you kindly repeat the question?

The Court: The reporter will read it.

(The record referred to was read by the reporter, as set forth above.)

The Witness: At that time of 1944 there was in existence a subsidy program of the United States Government for cattle slaughterers——

Mr. Strong: Don't describe all the details; just state the conversation.

Mr. Robnett: I move to strike out the statement of the [123] witness as not responsive.

The Court: The response of the witness to the latter question up to this moment may be stricken, and the jury instructed to disregard it. The idea is that you should state what you said to him and what he said to you as near as you can remember in substance.

The Witness: I would be difficult for me to remember all of the conversation.

The Court: It is with everybody. Nobody can ever remember exactly what was said, either as to the amount of words, and so forth, but the substance of the conversation relating to entries in the books concerning purchases of cattle.

The Witness: Mr. Ormont asked me to make certain changes in the subsidy program calculations.

(Testimony of Ernest Link.)

I had figured the cattle according to the actual cost and he would have been penalized by the government.

Mr. Strong: No, not that.

Mr. Robnett: Move to strike that out, that portion of his answer.

The Court: Did you tell him that?

The Witness: Yes.

The Court: Go ahead then. Just what you said. Do not say anything unless that is what the conversation was that passed between you.

The Witness: That was the conversation. [124]

The Court: All right.

The Witness: So he asked me to recheck my figures, which I did, whereupon he suggested that I should enter a different figure on the records, and I had to change the record which were sent in to the government, to the Defense Supply Corporation, in order to avoid the penalty of the subsidy program.

Q. (By Mr. Strong): Was the figure that he suggested to you as you have testified the one that you arrived at?

Mr. Robnett: Just a moment. I want to move to strike out the answer of the witness to the prior question, if the court please, on the ground that it is incompetent, irrelevant and immaterial, and not within the issues in this case. He is talking about some records, some subsidy proposition, and not a question of income. [125]

(Testimony of Ernest Link.)

The Court: The testimony is admissible as going to the amount of his income, and as to whether or not he committed a wilful act in failing to report the true amount. If at the appropriate time this is not connected with the question at issue, to-wit, whether or not he reported, or to wilfulness—

Mr. Strong: Did you say and or wilfulness?

The Court: Or wilfulness.

Mr. Strong: I submit it should be or.

The Court: We will argue that in the instructions. I have already told the jury that not only must the fact be proven as to the amount of his income and the amount of his return, but the fact that it was incorrectly returned, and in order to convict him they must show that his conduct was wilful.

Q. (By Mr. Strong): The amount which you entered was entered on the books of the Acme Meat Company? A. Yes.

Q. And the amount which was changed, as you testified, was entered on the books of the Acme Meat Company?

A. It was entered on the copy that went to the Defense Supply Corporation—all the copies.

Mr. Robnett: I move to strike the answer upon the ground that it is incompetent and irrelevant.

The Court: The answer may be stricken. The question is [126] whether or not it was entered on the books.

The Witness: May I ask a question?

The Court: Surely.

(Testimony of Ernest Link.)

The Witness: What do you consider the books?

The Court: The regular records of the Acme Meat Company. You had a set of books which you took home and wrote in?

The Witness: Yes.

The Court: That is what we mean by the books.

The Witness: But this was a loose record sent in every months—

The Court: We all either know or can guess what they are. But counsel wants to know the only thing material at this stage of the proceedings—whether or not you changed an entry on the original books.

The Witness: Yes.

Q. (By Mr. Strong): And the second thing that I want to know is this: You testified as to an amount which you had originally entered, is that right? A. Yes.

Q. You testified about a conversation with Mr. Ormont, changing the amount? A. Yes.

Q. Did you make the change? [127]

A. Yes.

Q. Was the figure which you ultimately entered pursuant to the conversation the true figure?

A. No.

Q. What was wrong with it?

A. It was a figure to avoid the penalty.

Mr. Robnett: I object to that—

The Court: What was wrong with it, is a pretty broad question.

Q. (By Mr. Strong): Was it correct or incorrect? A. Incorrect.

(Testimony of Ernest Link.)

The Court: You just said it was not the true figure. What was the true figure?

The Witness: The one I entered.

The Court: How much was it?

The Witness: I don't remember.

The Court: Do you remember the difference between the amount that you entered and the true figures?

The Witness: There were several instances. They amounted to about \$3,000.00.

Q. Altogether?

The Witness: Altogether.

The Court: Were they an increase or decrease of the amount of money paid to the purchaser for cattle? [128]

The Witness: It increased the amount of payment to the purchaser of the cattle.

Q. (By Mr. Strong): In other words, the figure that you finally entered was more than you actually paid?

Mr. Robnett: I object to that upon the ground that it is a conclusion.

The Court: It is leading and suggestive. Sustained.

Q. (By Mr. Strong): What was the figure you ultimately entered with reference to the amount?

The Court: He just told you.

Mr. Strong: I don't understand. May I have the record read?

(Record read by the reporter.)

(Testimony of Ernest Link.)

The Court: It increased the amount of money paid to the purchaser for the cattle?

Q. (By Mr. Strong): Do you mean that increased it on the books, or that actually increased the payment?

A. That actually increased the payment.

Q. Do you mean that that extra money was paid to the seller of the cattle? A. No.

Q. Just on the books? [129]

A. Just on the books. Pardon me. I misunderstood.

Q. You said several instances. During what period did the instances occur which you have testified to?

A. October, November, December, 1944.

Q. In each of those instances did you have a discussion with Mr. Ormont regarding the matter?

A. Yes. Sometimes it was over the telephone.

Q. Who suggested the increase in the figures?

Mr. Robnett: I object to that as leading and suggestive, and ask that the witness be allowed to merely give the conversation.

The Court: Sustained.

Q. (By Mr. Strong): Give the conversation.

The Court: You had better lay the foundation. When was it?

Mr. Strong: I was trying to save time.

The Court: October, November and December?

Q. (By Mr. Strong): In the first instance, will you state with whom you had the conversation?

The Court: He has already stated.

(Testimony of Ernest Link.)

Q. (By Mr. Strong): In the second instance?

A. I was told by Mr. Ormont to raise the figure again. [130]

Q. In the third instance?

A. The same thing.

Q. In the fourth instance?

A. I believe there were only three instances.

Q. So in every instance it was the same?

A. Yes; a different amount.

Mr. Strong: If your Honor please, I would like to go to those invoices now before I go to another phase of questioning.

The Court: All right. The jury will retire to the jury room. We will buzz for you. Remember the admonition.

(Jury retires from the court room.)

Mr. Robnett: At this time, your Honor—

The Court: Let me see Exhibit 39 for identification, the one invoice. I think the witness can step down.

Mr. Robnett: As to each and all of these invoices embraced in exhibits for identification, Nos. 38 and 39, I at this time want to make a motion to suppress those invoices and any evidence concerning them, on the ground that those were taken by someone from Mr. Ormont's office, from his files, without his consent, and this is the first time that they have shown up. He did not see the party take them, but they were missing from his files. I want to put Mr. Ormont on for the purpose of establishing they were without his consent. [131]

The Court: Even if they were missing from his files, they would not be subject to suppression unless they were taken from his files by an agent of the Government. If they were taken by somebody and ultimately were found in the hands of the Government, under your statement that would not be sufficient to order them suppressed.

Mr. Robnett: I expect to go a little further with the evidence than I have stated. I expect to show from Mr. Ormont that they were there at the time some Government officials came to the office to examine the records, and afterward, after they had gone, they were not there. That is as far as I can go.

The Court: Have you read the Harris case?

Mr. Robnett: No, I have not, your Honor.

The Court: You will have to get ready for a shock when you read it. In the Harris case, that was just decided—you are familiar with the name?

Mr. Robnett: Yes, I am.

The Court: They arrested a man in his six-room apartment, charging him with mail fraud. They put handcuffs on him, and left him in the center of the living room, and conducted a complete and thorough search of the entire house; and took up mattresses, examined the bureau and beds, upsetting things, clothing and everything, inside the house, and finally they found an envelope in the bureau drawer marked: [132] George Harris, Personal. It was sealed. They opened it and found draft cards. They never prosecuted him for mail

fraud, but prosecuted him for unlawful possession of draft cards. The Supreme Court held they were lawfully taken. Now, if they can do that, I don't know what there is to the proposition of ever suppressing any evidence, that belongs to the defendant. Of course, they did point out finally in the decision that these draft cards were Government property, and never belonged to the defendant.

Mr. Robnett: Those here would not be government property.

The Court: What do you propose to show by the defendant Ormont?

Mr. Robnett: I propose to show that these invoices were in his office, and in his files in his office, and that agents of the Government——

The Court: What bureau or department?

Mr. Robnett: They were agents from the Internal Revenue Department, I think. They came there and wanted to look his records over, and did do so.

The Court: Did he consent?

Mr. Robnett: I think he did consent.

The Court: I suppressed the evidence in the Glick Lumber Company case, and the Circuit Court reversed me.

Mr. Robnett: He only consented to them looking them [133] over. He did not consent to their taking them.

The Court: The same situation. They took them out, and copied them, and brought them back, and did not bring some of them back, but he consented, and the Circuit Court held that he consented, and

therefore they had a right to take them. I suppose, however, in view of your objection, the best thing to do is to make a record, because I doubt if the Appellate Courts are through with this question.

Mr. Robnett: I would like then to call Mr. Ormont to the stand.

The Court: We will take a short recess.

(Short recess.) [134]

The Court: In the case of U. S. vs. Ormont, Mr. Robnett?

Mr. Robnett: Your Honor, I find this situation, I spoke a little out of turn as to what I understood about the invoices. There were some invoices that disappeared, as I have stated, but I am now told by my client that he cannot say that these invoices were taken in that fashion, although they were taken by someone without his consent. Therefore I feel that I, in the first instance, should make the apology to any officers of the Government that I might have inferred had taken them because I don't know that they did at all, and therefore I want to correct the record in that respect. And as to these particular ones, since my witness could not say positively that they were there at the time the officers were there, I naturally wouldn't want to press my objection to suppress because I wouldn't have sufficient ground.

The Court: Very well.

Mr. Robnett: I thank you very much for giving me consideration.

The Court: Call the jury down.

(The jury returned to the courtroom at 3:25 o'clock p.m.)

The Court: I wish to commend you for your candor, Mr. Robnett.

Mr. Robnett: I was mistaken. There were some missing and I thought these were the ones. [135]

The Court: Very well.

Mr. Strong: I can state for the record that these were obtained by Mr. Link, and he will so testify. In other words, he will disclose where they came from.

The Court: Mr. Link, will you resume the stand?

ERNEST LINK

resumed the stand and testified further as follows:

The Court: Usual stipulation?

Mr. Strong: So stipulated.

Mr. Robnett: Usual stipulation.

At this time I withdraw my objection to the exhibits. At least counsel was offering them and was asking questions as to them.

The Court: I do not think he had offered them in evidence. He had exhibited them to the witness.

Mr. Robnett: Yes.

The Court: Your objection is withdrawn.

Mr. Katz, usual stipulation?

Mr. Katz: If the Court please, my understanding is that all of this—

The Court: No, the usual stipulation, to wit, that the defendants are present in person and by

(Testimony of Ernest Link.)

counsel and each one of the jurors is present and in his or her respective place.

Mr. Katz: So stipulated, your Honor.

The Court: Very well. [136]

Direct Examination
(Continued)

By Mr. Strong:

Q. Mr. Witness, would you please look at those two sets of exhibits, which I believe are Government's Exhibits 38 and 39 for identification, is that right? A. Yes.

Q. And will you state whether you ever saw them before?

A. (Examining documents): No, I have not seen these.

Q. Which ones? A. All of these.

Q. You never saw them before?

A. Yes, I have seen them. I have not seen them —pardon me—I gave you the wrong answer. I have seen these before; yes.

Q. Which ones? A. All of them.

Q. Nos. 38 and 39 for identification?

A. Yes.

Q. And you have seen each of the invoices which make up Government's Exhibit 38 for identification? A. Yes.

Q. Now will you state what they are, if you know? A. They are invoices—

Mr. Robnett: I submit that they speak for themselves, and they are the best evidence of what they are.

(Testimony of Ernest Link.)

Mr. Strong: All right. That is satisfactory.

Mr. Robnett: It is purely an opinion of the witness.

Mr. Strong: I will ask another question.

The Court: I don't know. They speak for themselves as to what they are on their face, but what they are with relation to any set of books—

Mr. Strong: I was getting to that next, your Honor.

The Witness: They are cash sales for meat, meat sold by Acme Meat Company, to various customers.

Q. (By Mr. Strong): As far as you know, is payment made on those invoices?

A. They are all marked paid. [138]

Q. Did you see any names on them?

A. Yes.

Q. Do you recognize the signature appearing on those? A. For the receipt, yes.

Q. Whose signature is it?

A. Sam Ormont's signature.

Q. Is that the defendant in this case?

A. Yes.

Q. Will you state whether any of these invoices which are marked Government's Exhibits 38 and 39 for identification, were ever entered by you on the books of the Acme Meat Company?

A. They were not entered.

Q. How do you know?

A. Because they do not bear my entry marks, nor my check marks for the extensions.

(Testimony of Ernest Link.)

Q. Will you state where you have previously seen these invoices, if you have seen them anywhere outside of this court room?

A. Yes, I obtained them in the office of the Acme Meat Company, where they were being used as scratch paper. So I picked up part of them, and took them with me home to use them for the same purpose, and I recognized that I had never seen those before, so I kept them.

Q. Were there any other such invoices, which had not been recorded by you, being used in the office of the Acme [139] Meat Company?

Mr. Robnett: I object to that as asking for the conclusion of the witness—other similar invoices.

The Court: Let me hear the question.

(Question read by the reporter.)

The Court: Objection overruled.

A. No.

Q. (By Mr. Strong): So far as you know, those are the only ones? A. Those are.

Q. Did you ever have any discussion with the defendant Sam Ormont concerning these invoices, Government's Exhibits 38 and 39 for identification?

A. No.

Mr. Strong: I offer these exhibits in evidence, your Honor, 38 and 39 for identification.

The Court: Admitted.

(The documents heretofore marked for identification were received in evidence and marked Government's Exhibits 38 and 39 and were received in evidence.)

(Testimony of Ernest Link.)

Q. (By Mr. Strong): By the way, were these Exhibits 38 and 39 for identification turned over by you to the Government? A. Yes.

The Court: When was it that you saw them in the office [140] of the Acme Meat Company?

The Witness: It was in 1944. I cannot tell exactly when.

The Court: 1944?

The Witness: 1944.

The Court: And they are all dated 1942?

The Witness: Yes.

The Court: Did you check your books to see if you had any corresponding entries of cash sales for those years?

The Witness: No, I did not check them.

Q. You did not check 1942?

A. I did not check those against those periods, no.

Q. Not against those periods? A. No.

Q. (By Mr. Strong): When you made entries of amounts on the invoices in the books, you made a certain designation on the invoices?

A. Yes.

Q. Do those designations appear on those invoices? A. No.

Q. So far as you know, those were never recorded by you? A. Yes.

Q. That is, in the books of the Acme Meat Company? A. That's right.

Q. Did you ever observe, in connection with your [141] duties, the receipt of any money by

(Testimony of Ernest Link.)

either Sam Ormont, or the defendant Phillip Himmelfarb, which was not recorded by you subsequently on the books of the Acme Meat Company?

Mr. Katz: That is objected to on behalf of the defendant Himmelfarb upon the ground that it is immaterial, and as not bearing on any issue before this Court. No foundation has been laid for that, and on the ground that the books would be the best evidence of what was or was not recorded.

Mr. Strong: What books or records? Do you have any books or any records?

The Witness: No.

The Court: Objection sustained.

Mr. Robnett: I would object on the same ground for Mr. Ormont, your Honor.

The Court: Objection sustained.

Q. (By Mr. Strong): Did you ever observe the defendant Sam Ormont making any sales of meat on the premises of the Acme Meat Company?

A. Yes.

Mr. Robnett: I object to that as immaterial.

The Court: Obviously it is preliminary.

Q. (By Mr. Strong): Did you ever observe the defendant Sam Ormont receive payment for meat sold by him, in cash? A. Yes. [142]

Mr. Robnett: I object to that as incompetent, irrelevant and immaterial.

The Court: It is still preliminary. It is immaterial unless it is preliminary. Is it preliminary?

Mr. Strong: Yes, I am getting to the money.

(Testimony of Ernest Link.)

Q. Did you ever have any discussion with the defendant Sam Ormont regarding the receipt of any money in connection with meat sales, that was not turned over to you? A. No.

Mr. Robnett: I object to that as assuming it was not turned over to him. There is no evidence that it was not turned over to him.

The Court: He has answered no.

Q. (By Mr. Strong): Did you have any discussions with the defendant Sam Ormont regarding receipts in connection with sales of meat, besides those which were given to you on the invoices?

A. No.

Q. Did you ever have any discussions with Sam Ormont, during 1942, 1943 or 1944, regarding any sums of money which were received by him in the sale of meat? A. No.

Q. You never talked to him about any moneys?

A. Except the deposits to be made in the bank.

Q. Did you ever discuss with the defendant Sam Ormont [143] or the defendant Phillip Himmelfarb, the receipt of any money in addition to the amount shown on the invoices?

Mr. Katz: I object to that as leading and suggestive, incompetent, irrelevant and immaterial; no foundation laid for the question as to the defendant Himmelfarb.

Mr. Robnett: I join in the objection.

The Court: Let me hear the question.

(Question read by the reporter.)

(Testimony of Ernest Link.)

The Court: There isn't any foundation laid for that question so far as the defendant Himmelfarb is concerned. The objection will be sustained as to the defendant Himmelfarb, and overruled as to Ormont.

The Witness: No. [144]

Q. (By Mr. Strong): Did you ever observe the defendant Sam Ormont receive any money in connection with sales of meat in addition to the amounts shown on the invoice?

Mr. Robnett: Object to that as calling for a conclusion of the witness.

The Court: Objection sustained

Q. (By Mr. Strong): State what, if anything, you observed with reference to the collection by Sam Ormont of moneys in addition to those shown on the invoices.

Mr. Robnett: Object to that as assuming something not in evidence.

The Court: Objection sustained.

Mr. Robnett: And calling for a conclusion and opinion of the witness.

The Court: Objection sustained.

Mr. Strong: May I approach the bench, your Honor?

The Court: All the defendants and their lawyers have to come up. It has to be in the presence of the defendants. There isn't enough room for everybody.

Mr. Strong: That is a big bench, your Honor.

The Court: No. If you wish the jury excused, I will excuse them.

(Testimony of Ernest Link.)

Mr. Strong: I don't want the jury walking up and down [145] the stairs.

The Court: You can proceed and present whatever you have until the conclusion of the session this afternoon.

Mr. Strong: What time will we conclude?

The Court: About 4:30, I guess.

Mr. Strong: Well, your Honor, it relates to these questions, about something that went on in discussion in your Honor's chambers.

The Court: Proceed.

Mr. Strong: All right.

The Court: What do you mean, went on in my chambers?

Mr. Strong: We had some conferences with counsel outside the hearing of the jury

The Court: In the presence, however, of all counsel?

Mr. Strong: Oh, yes. All counsel were there.

The Court: Very well.

Q. (By Mr. Strong): Mr. Link, did you prepare or assist in the preparation of the income tax return for the defendant Sam Ormont for the calendar year 1944? A. Yes.

Q. I show you Government's Exhibit 3, which is a photostatic copy of Sam Ormont's return for the calendar year 1944, and ask whether that is the return which you just spoke of, or a photostat of that return. [146] A. Yes.

Q. Did you prepare the return itself?

A. Yes.

(Testimony of Ernest Link.)

Q. Did you discuss the entires on that return with the defendant Ormont? A. Yes.

Q. Where did you obtain the figures which were placed upon the return?

A. Most of it was obtained from the set of books which I kept for the Acme Meat Company.

Q. I can't hear you. Will you speak a little louder?

A. I obtained the figures from the set of books of the Acme Meat Company.

Q. Was there any other source of information?

A. Yes, from Mr. Ormont himself.

Q. What did you discuss with him? The items on the return?

A. Not any figures that concerned what the books reflected; any other income that might have to be added to what the books reported as the proceeds from business.

Q. Did Mr. Ormont give you any other—

The Court: Pardon me. The exhibit you showed the witness, was that the income tax return of the defendant Ormont involved in count 1?

Mr. Strong: Yes, your Honor. [147]

The Court: That is the individual and not the partnership return?

Mr. Strong: Just the individual.

The Court: The individual return?

Mr. Strong: Yes, sir.

The Court: Did you prepare the partnership return too?

(Testimony of Ernest Link.)

The Witness: There was no partnership in 1944.

Mr Robnett: I move to strike out the answer on the ground it is a conclusion of the witness.

Mr. Strong: I think it is a statement of fact, your Honor.

Mr. Robnett: It is not responsive to the question.

The Court: There is one partnership return here in evidence.

Mr. Strong: Yes, it is No. 6, which is a document which is ambiguous in nature.

The Court: Let us find out about it. I will withdraw the question I asked and instruct the jury to disregard my question.

Mr. Robnett: What about the answer that the witness gave? I move to strike it out, your Honor.

The Court: The question is out so the answer goes out too

In preparing Exhibit No.—what is the number?

The Witness: 3. [148]

The Court: ——No. 3, did you prepare this directly from the books?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Strong): And did you include on that return, which is Government's Exhibit No. 3, any figure as to income which figures you obtained from Mr. Ormont? A. Yes.

Q. What particular figures were those?

A. I believe there was income from bonds, from war bonds, which I included in that figure.

(Testimony of Ernest Link.)

Q. And you got the information as to that income from whom? A. Mr. Ormont.

Q. Did you ask him or did he volunteer?

A. He told me voluntarily.

Mr. Robnett: I object to that.

The Court: Is there an objection?

Mr. Strong: I heard something that sounded like one.

Mr. Robnett: I will withdraw the objection.

Q (By Mr. Strong): Did you ask Mr. Ormont whether he had any income in addition to that which you reported on the return?

Mr. Robnett: I object to this as leading and suggestive. [149] He might ask him what the conversation was.

The Court: Objection sustained.

Q. (By Mr. Strong): State what the conversation was, Mr. Link.

A. It was always—I cannot give you any conversation.

Q. In substance, not the precise words, Mr. Link. Nobody remembers the precise words

A. It is always my habit when making income tax reports—

Q. Not what is always your habit, but what did you do in this instance?

A. I did ask if that was all the income.

Q. Whom did you ask? A. Mr. Ormont.

Q. What did he tell you?

A. Yes. He gave me the figure for the war bonds interest.

(Testimony of Ernest Link.)

Q. Is that included there?

A. That is included.

Q. How much is that?

A. I don't remember.

Q. Look at the return.

A. It is so small I cannot read it.

The Court: You mean the figures are so small?

The Witness: No, the lines on this photostat. I believe it is the first figure.

The Court: No. 3, enter here the total amount of your dividends and interest including interest from government obligations unless wholly exempt from taxation, is that the one?

The Witness: Yes.

The Court: \$1375?

The Witness: That is correct.

Q. (By Mr. Strong): Did you prepare the return for Phillip Himmelfarb? A. No.

Q. For any year? A. No.

Q. By the way, did you prepare the returns for Mr. Ormont for any other years besides that one?

A. Yes.

Q. For what year?

A. 1942 and 1943 and also previous years.

Q. I show you Government's Exhibits 1 and 2, No. 1 is an income tax return for the calendar year 1942 for Sam Ormont, and No. 2 is an income tax return for the calendar year 1943 for Sam Ormont. Will you state whether you prepared those two?

A. Yes, I did. [151]

Q. Which ones? A. Both of them.

(Testimony of Ernest Link.)

Q. Where did you get the figures which you included on those two returns?

A. From the books of the Acme Meat Company.

Q. Did you have any discussions with the defendant Sam Ormont regarding those returns or the figures on them? A. Yes.

Q. Now take the 1942 return and state what discussion you had with Sam Ormont regarding those returns or the figures on them. A. Yes.

Q. Now take the 1942 return and state what discussion you had with Sam Ormont regarding that return?

A. Whether that was his income, his complete income.

Q. What did he tell you? A. Yes.

Q. Is that all the discussion?

A. That is all, in toto, yes.

Q. Now the 1943 return, did you have a discussion with Mr. Ormont regarding that?

A. Yes.

Q. What was the discussion?

A. The same discussion; same question, whether it was his income, whether there were any additions.

Q. What was the answer? A. No.

Q. No what?

A. There were no other additions than what the books reflect. [152]

Q. And did you see Mr. Ormont sign any one of those three income tax returns?

A. No, I did not see him sign them.

(Testimony of Ernest Link.)

Q. You turned them over to him? A. Yes.

Q. Now, Mr. Link, did you ever see any other record of income of either Sam Ormont or Phillip Himmelfarb, or the defendant Acme Meat Company, besides the records—

The Court: The defendant Acme Meat Company?

Mr. Strong: Not the defendant; the defendant Sam Ormont, the defendant Phillip Himmelfarb and the Acme Meat Company, not a defendant.

Mr. Katz: I object to that, if the court please, on the ground that as to the defendant Himmelfarb there is no foundation laid, it assumes facts not in evidence, incompetent, irrelevant and immaterial, has no bearing on any issues in this case.

Mr. Robnett: I adopt the same objection for Mr. Ormont and add to it that it is asking for an opinion of the witness to-wit, namely, whether it is a record of income.

The Court: Let me hear the question again.

(The question referred to was read by the reporter, as follows:

("Q. Now, Mr. Link, did you ever see any other record of [153] income of either Sam Ormont or Phillip Himmelfarb, or the Acme Meat Company, besides the records you have testified to here?"")

The Court: There is no foundation for Himmelfarb. The objection as to Phillip Himmelfarb

(Testimony of Ernest Link.)

is sustained. The objection is overruled as to the defendant Ormont. The witness may answer the question.

Do you remember it?

The Witness: Yes, I do.

No, I saw no records.

Q. (By Mr. Strong): Did you see anything?

A. Yes.

Q. What?

A. I saw the taking of money.

Mr. Robnett: I object to that and move to strike it out, if the court please, on the ground it is incompetent, irrelevant and immaterial, and doesn't show income.

Mr. Strong: He hasn't finished yet, your Honor.

The Court: Well, at the present stage of the answer it is a conclusion of the witness and is objectionable.

Q. (By Mr. Strong): Describe what you saw.

The Court: The answer may be stricken. The jury is instructed to disregard it. Obviously the defendant Sam [154] Ormont was in business and he had to take money from somebody.

Mr. Strong: My understanding is that the witness is testifying to money—

The Court: He just said he saw him take money. He hasn't testified to anything else.

Mr. Strong: Let me go back for a moment.

Q. Do you know the defendant Phillip Himmelfarb? A. Yes.

(Testimony of Ernest Link.)

Q. Did you see Mr. Himmelfarb on the premises of the Acme Meat Company at any time?

A. Yes. [155]

Q. During what period?

A. During 1944 and 1945.

Q. Will you state what you observed him doing?

Mr. Katz: That is objected to upon the ground that no foundation has been laid as to time and place.

Mr. Strong: The place is the premises, and the time is 1944 and 1945.

The Court: I take it that your question generally is as to what he was doing.

Mr. Strong: I want to show how he was—

The Court: I think it is a little too broad. What did you see him doing in 1944 and 1945 is liable to cover quite a variety of situations.

Q. (By Mr. Strong): Did you see Mr. Himmelfarb performing any work on the premises of the Acme Meat Company during 1944?

A. Yes.

Q. And during 1945? A. Yes.

Q. What did you observe?

Mr. Katz: I object to that, if the Court please, as too indefinite; no foundation laid.

The Court: Overruled.

A. I saw Mr. Himmelfarb making out invoices to customers when they would come to the Acme Meat Company. He would [156] then compute on the machine in the office the amount due by the customer; then he would make after that computation

(Testimony of Ernest Link.)

another computation on the machine, a multiplication of the weight of that carcass of beef, or whatever it may have been, and enter this figure which was, as a rule, a computation——

Mr. Katz: That is objected to, if the Court please. The witness quite obviously is testifying to a conclusion, and to opinions on the part of the witness, without any foundation being laid therefor.

The Court: The question is all right to where he stated just now as a rule, and he would enter the computation. From there you can go on, but not anything else about your ideas as to why he was doing it.

The Witness: I saw him compute the weight of the bill with the figure 3, and enter the amount on a list which was kept in the drawer of that desk.

Q. (By Mr. Strong): What desk?

A. Of the desk of the Acme Meat Company, in the office.

Mr. Robnett: I move to strike out the answer as to Mr. Ormont upon the ground that it is hearsay and the opinion of the witness, and is not binding upon Sam Ormont.

Mr. Strong: We will tie it up, your Honor, with Sam Ormont.

Mr. Robnett: It is incompetent, irrelevant and immaterial. [157]

The Court: That was at the Acme Meat Company?

The Witness: Yes.

(Testimony of Ernest Link.)

The Court: There is testimony in the record that the defendant Sam Ormont owned the Acme Meat Company in 1944. The objection will be overruled as to both defendants.

Q. (By Mr. Strong): Did Mr. Himmelfarb work at the Acme Meat Company?

Mr. Katz: I object to that as calling for the conclusion of the witness.

Q. (By Mr. Strong): State, if you know, what he did.

The Court: Do you withdraw the last question?

Mr. Strong: I withdraw it, to save time.

The Court: I thought you just asked him what Mr. Himmelfarb did down there, and he described it.

Mr. Strong: Then he went into some particular details. I would like to know what the defendant did.

The Court: Did you see him do anything else other than what you have just got through describing?

A. Yes.

The Court: He may express his conclusion generally. Himmelfarb, was he down there in connection with the company in some way or another?

The Witness: Yes.

Q. (By Mr. Strong): In what way?

The Court: If you know. Do you know?

A. He was selling beef and other meat cuts to the trade.

(Testimony of Ernest Link.)

Q. (By Mr. Strong): For the Acme Meat Company?

A. For the Acme Meat Company.

Q. As an employee?

The Court: Do you know whether or not he was an employee or one of the owners, or how he was connected? Do you know that?

A. What is that?

Q. Whether or not he was an employee or otherwise connected with the company? The answer to that is yes or no? Do you know it?

A. I can say yes and no, because I know two sides of it.

Q. You know two sides? A. Yes.

Q. What I am trying to get at is, when I asked you if you know, if you know it of your own knowledge, or if you just heard someone gossiping or not?

A. No, it is definitely knowledge.

Q. You know that? A. Yes. [159]

Q. What was his relationship to the Acme Meat Company? A. He was a partner.

Q. He was a partner when?

A. In 1944 and 1945.

Q. And 1945? A. Yes.

Mr. Robnett: I move to strike out the answer as a conclusion of the witness, if the Court please.

Mr. Strong: We have further proof.

The Court: That is a legal conclusion, whether a person is a partner, or is not. I think probably your objection is good as to both defendants, and the jury will be instructed to disregard the answer

(Testimony of Ernest Link.)

of the witness. I think perhaps more foundation can be laid.

The Court: Did you make out the payroll checks?

A. No.

Q. Did you audit the payroll checks?

A. Yes.

Q. You checked them in the book.

A. Yes.

Q. Against the check books? A. Yes.

Q. Were they payroll checks to Phillip Himmelfarb?

A. Yes. That's why the answer was yes and no.

Mr. Strong: If your Honor please, I started this to get Mr. Himmelfarb into the picture, but I have forgotten what I was getting him into. The question I asked was sustained as to Mr. Himmelfarb, because he was not in the picture. May I have the question read?

(Record read by the reporter.)

The Court: You had better ask another question. What you are trying to find out is the connection of Himmelfarb with the Acme Meat Company?

Mr. Strong: For a purpose. We will leave that for the time being.

Q. These entries which you discussed, which you saw Mr. Himmelfarb making on the sheets of paper, was it— A. It was a list, yes.

(Testimony of Ernest Link.)

Q. Did you ever see Mr. Himmelfarb receive any sums of money in connection with the sale of meat, which he entered on those sheets you have described?

Mr. Katz: I object to that, as a conclusion of the witness; incompetent, irrelevant and immaterial; no foundation laid.

Mr. Robnett: It is incompetent, irrelevant and immaterial as to Mr. Ormont. There is no connection between Mr. Ormont and Mr. Himmelfarb shown here except as an employee.

Mr. Strong: I don't know that it is shown except as an employee. [161]

Mr. Robnett: It is shown he received employee's checks.

The Court: That is the record up to now.

Mr. Strong: It shows the receipt of those checks by him.

The Court: Payroll checks. Let me hear that.

(Record read by the reporter.)

The Court: The objection is overruled as to both defendants.

A. Not in connection with that list.

Q. (By Mr. Strong): What did you observe in connection with that list?

A. I saw on the list the names of customers and the amounts placed opposite those names of the customers. Sometimes they were written in the handwriting of Mr. Himmelfarb, and sometimes in

(Testimony of Ernest Link.)

the handwriting of Mr. Ormont. Some of them were marked "Paid" and crossed out; some of them were left open, and not crossed out.

Q. Did you record any of those amounts on those sheets into the records and books of the Acme Meat Company?

Mr. Katz: Objected to as to the defendant Himmelfarb. It is incompetent, irrelevant and immaterial. The books and records are the best evidence.

Mr. Strong: We don't have them.

Mr. Robinett: We join in the objection.

The Court: Objection overruled.

Q. Did you record any of the amounts from that list you [162] have spoken of into the books and records which you kept of the Acme Meat Company?

A. No.

Q. (By Mr. Strong): With reference to Mr. Himmelfarb—

The Court: Did you ever examine that list?

A. That one time.

Q. One time? A. Yes.

Q. You say there were names of people on the list? A. Yes.

Q. And figures?

A. Yes. I had half an hour's time to study it.

Q. (By Mr. Strong): Mr. Witness, will you state from your knowledge of the books and records of the Acme Meat Company how the profits were distributed for the year 1944?

(Testimony of Ernest Link.)

Mr. Robnett: That is objected to as incompetent, irrelevant and immaterial, and his conclusion, and assuming something not in evidence, namely, that there were profits.

Mr. Katz: I will add to that, if the Court please, that the books and records are the best evidence.

Mr. Strong: The profits are shown on the income tax returns which are in evidence, your Honor. We don't have the books. [163]

The Court: What was the question?

(Question read by the reporter.)

The Court: Overruled.

A. To the best of my knowledge they were credited to the account of Sam Ormont. [164]

Q. (By Mr. Strong): For the entire year?

A. Yes.

Q. That is for the year 1944? A. Yes.

Q. Did you observe any increase, or did you make any entries on the books or records of the Acme Meat Company, distributing any of the profits for the year 1942, '43 or '44 to the defendant Himmelfarb?

Mr. Katz: Objected to, if the Court please, as to 1944 it has been asked and answered, and as to any previous year it is incompetent, irrelevant and immaterial. There is no issue in this case as to the years previous to 1944.

The Court: Objection sustained.

Q. (By Mr. Strong): As to 1944 then?

The Court: He just answered it. I sustained the objection.

(Testimony of Ernest Link.)

Q. (By Mr. Strong): Now are you sure that you remember correctly what the books showed for that year?

Mr. Katz: If the Court please, the Government cannot impeach its own witness. It is argumentative.

Mr. Strong: I am trying to refresh his recollection.

The Court: It is argumentative. Objection sustained. [165] There is nothing in the books that says you cannot impeach your own witness.

Mr. Katz: I think that is right, but I believe the foundation has to be laid, your Honor.

The Court: Mr. Link, do you have a little difficulty hearing?

The Witness: On the right ear; yes.

The Court: Have you had any difficulty hearing Mr. Strong's questions?

The Witness: No.

The Court: Very well.

Q. (By Mr. Strong): Aside from the records and the books of the Acme Meat Company do you have any knowledge as to how the profits of the Acme Meat Company for the year 1944 were distributed?

Mr. Katz: Objected to, if the Court please, as incompetent, irrelevant and immaterial, no foundation laid for that question as against the defendant Himmelfarb, calls for a conclusion, not the best evidence.

(Testimony of Ernest Link.)

Mr. Robnett: I object on the further ground it has been asked and answered. He said it was distributed to the best of his knowledge.

The Court: The question is now aside from the books. Does he have any knowledge. The objections are overruled as to both defendants and the question must be answered yes or [166] no, whether you have any knowledge.

The Witness: Yes.

Q. (By Mr. Strong): Will you state how the income was distributed for the year 1944 of the Acme Meat Company?

Mr. Robnett: I object to that as incompetent, irrelevant and immaterial, if the Court please. We cannot tell what his foundation is for his knowledge.

The Court: You object on the ground there is no foundation?

Mr. Robnett: No foundation.

The Court: Sustained.

Q. (By Mr. Strong): Will you state on what basis you know?

Mr. Robnett: Same objection, if the Court please.

The Court: You said you had some knowledge outside of the books?

The Witness: Yes.

The Court: How do you know? Did somebody tell you?

The Witness: Mr. Ormont told me.

The Court: Mr. Ormont told you?

The Witness: Yes.

(Testimony of Ernest Link.)

Q. (By Mr. Strong): Is that the defendant Ormont? A. Yes. [167]

Q. Will you state what he told you?

Mr. Katz: Objected to, if the Court please.

The Court: No foundation; time, place, persons present.

Q. (By Mr. Strong): Will you state when this happened and who was present?

A. It happened at the office of the Acme Meat Company in 19—I don't really recollect whether it was at the end or in the begining of 1945.

Q. Who was present? A. Mr. Ormont.

Q. Anybody else? A. No.

Q. Will you state what Mr. Ormont said to you?

Mr. Katz: Objected to, if the Court please, as against the defendant Himmelfarb it is hearsay.

The Court: Objection sustained as to the defendant Himmelfarb.

Mr. Robnett: I am going to object to it for Mr. Ormont on the ground it is after 1944 and is therefore incompetent, irrelevant and immaterial, doesn't go to prove any income for 1944 by either defendant.

The Court: Objection overruled as to the defendant Ormont.

The Witness: Mr. Ormont told me that it was impossible [168] to carry Mr. Phillip Himmelfarb on the books of the Acme Meat Company as a partner although he was a partner because that would spoil some of the subsidy payments and therefore I should list him as an employee, and that the profit was to be distributed to both accounts at certain periods.

(Testimony of Ernest Link.)

Q. (By Mr. Strong): Did you so distribute the profits? A. Yes.

The Court: I thought you just said you didn't.

The Witness: That is technically wages; not profits from the books.

The Court: All right.

Mr. Strong: What he said, your Honor, was from the books and records.

The Court: I know what he said.

Mr. Strong: This is a technical case.

The Court: He said he paid him wages and he said a few minutes ago he didn't know anything from the books whether anybody was interested besides Ormont.

Mr. Strong: From the books.

The Court: From the books.

Mr. Strong: And this is from outside the books.

Q. Is that right? A. Correct.

The Court: The jury are going to have to decide that. [169]

Q. (By Mr. Strong): Did you ever see the defendant Himmelfarb in connection with sales of meat collect any money from the purchasers in addition to the amounts shown on the invoices?

Mr. Katz: Objected to, if the Court please, as leading and suggestive, calls for a conclusion of the witness, there is no foundation laid, assumes facts not in evidence, incompetent, irrelevant and immaterial.

The Court: Sustained.

(Testimony of Ernest Link.)

Q. (By Mr. Strong): Did you during 1945 have any discussion with the defendant Sam Ormont concerning the collection of sums by him, of any sums by him, in addition to those shown on invoices for the years 1942, '43 or '44?

Mr. Robnett: Object to that as not showing time, place or persons present.

Mr. Strong: If he says yes, I will get to the latter.

The Court: That calls for a yes or no answer. Do you remember the question?

The Witness: Yes.

Yes, is the answer.

Q. (By Mr. Strong): When, where and who was present on the first, if there were more than one such occasions?

A. It was only Mr. Ormont and myself, [170]

Q. When? A. The day when I left him.

Q. What was the date?

A. The 15th of April, I believe.

Q. What year? A. 1945.

Q. Where?

A. At the Acme Meat Company plant in South Gate.

Q. Who was present?

A. Mr. Ormont and myself.

Q. Will you state what was said by Mr. Ormont to you and by you to Mr. Ormont in that connection?

Mr. Katz: Objected to as hearsay, if the Court please.

(Testimony of Ernest Link.)

The Court: Objection sustained as to the defendant Phillip Himmelfarb only.

The Witness: I told him at that time that I was leaving his services, and he asked me to stay, and I told him that I preferred not to work for one who was working—who was doing a shady business.

Mr. Robnett: I move to strike out the answer on the ground it is incompetent, irrelevant and immaterial, not responsive to the question.

Mr. Strong: It is not finished.

The Court: Had you finished your answer?

The Witness: No. [171]

Mr. Robnett: I move to strike out such as he has already said as to his conclusion.

The Court: He says that is what he told him. Proceed with the answer.

The Witness: Mr. Ormont told me then that he was very sorry to see me go, and roughly two weeks later he called me on the telephone——

The Court: No, just this one conversation, not two weeks from now. Is that all you had to say?

The Witness: In essence, that is all.

Mr. Robnett: I move to strike it out.

The Court: The whole answer may be stricken as not responsive to the question.

Mr. Strong: May I be heard, your Honor?

The Court: I can tell if it is not responsive.

Mr. Strong: If I can tie it up with subsequent conversations?

The Court: It is not responsive to the question.

Q. (By Mr. Strong): On the subsequent occasion, where did the conversation take place?

(Testimony of Ernest Link.)

The Court: That is all you want this witness to talk [173] about?

Mr. Strong: That is right.

A. There have been several conversations.

The Court: The jury is instructed to disregard the answer of the witness to the last question.

The Witness: There have been several discussions and [172] talks.

Q. (By Mr. Strong): Tell us the next one. When was the next one?

A. They were mostly by telephone.

Q. When did it occur?

A. In the interim of the next two weeks, Mr. Ormont called me several times in order to obtain his books.

Q. Did you ever talk to Mr. Ormont on the telephone prior to that occasion? A. Yes.

Q. Did you recognize his voice on the telephone? A. Yes.

Q. Was that Mr. Ormont's voice that spoke to you? A. Yes.

Q. On this occasion? A. Yes.

Q. Go ahead.

A. I told Mr. Ormont that I did not—

The Court: Just a minute. Are you asking for the whole conversation or are you asking him for a conversation concerning the receipt of money other than shown on the books for the years 1942, '43 and '44? That was your question?

Mr. Strong: That is what I want. I am just interested in that.

(Testimony of Ernest Link.)

The Court: If he knows anything about it?

Mr. Strong: That is right.

The Court: Do you understand that?

The Witness: Yes.

The Court: All right.

The Witness: I told him that my answer was still no, that I would prefer not to work for him any more because of his shady operations. In fact, that I had a mind to report him to the Government.

Mr. Robnett: I move to strike that.

The Court: Was that said in the conversation?

The Witness: In that particular conversation; yes.

Mr. Robnett: I move to strike the answer, if the Court please.

The Court: The answer is stricken and the jury is instructed to disregard it.

Q. (By Mr. Strong): Do you understand my question?

A. Will you kindly repeat it?

Mr. Strong: May I have the reporter read it?

The Court: That is the question that was asked quite some time ago.

(The question referred to was read by the reporter as [174] follows:

("Q. Did you during 1945 have any discussion with the defendant Sam Ormont concerning the collection of sums by him, of any sums by him, in addition to those shown on invoices for the years 1942, '43 or '44?")

(Testimony of Ernest Link.)

The Court: That is all the conversation that counsel is asking you about.

The Witness: Yes.

The Court: Whether you had any conversation. You have identified two conversations, one in his office and one on the phone and in neither of which anything was said concerning the receipt of money by him not shown on invoices. Now we are up to here. Go on.

The Witness: Then I received a telephone call from Mr. Ormont to come down to the stockyards and meet him there and turn over the books to him.

Q. (By Mr. Strong): What date was that?

A. About two weeks after I left his services. It could have been a month. I don't know exactly.

Q. Did you go down?

A. Yes, I went there.

The Court: Was that all the conversation?

The Witness: No, I went there and met him and he asked [175] me again to return to his services because it did not look good if I left him just then. He also offered me \$2500 bonus at the end of the year if I would stay, and a monthly accounting fee of \$125.

Q. What about the conversations?

A. Then there was conversation about the black market, in fact I told him that I did not like his way of doing business and I did not like to work for someone who worked in the black market, and his answer was that practically everybody was in the black market these days.

(Testimony of Ernest Link.)

The Court: Is that all the conversation?

The Witness: In essence; yes.

Mr. Robnett: I move to strike it out, your Honor.

The Court: The whole answer may be stricken and the jury instructed to disregard it. The witness has not answered the question. It is not responsive to the question. The question is whether or not you had a conversation with him about the receipt of money that was not shown on the invoices. Did you have any subsequent conversations now?

The Witness: No. The answer would be no then.

The Court: The answer would be no?

The Witness: No.

The Court: You wish to revise your previous testimony in which you said the answer was yes?

The Witness: Yes. [176]

The Court: Very well.

Mr. Strong: You say you are going to recess at 4:30? I think I could speed this up a little if we recessed now. It will take much less time in the morning.

The Court: You move to recess now?

Mr. Strong: Yes, if you don't mind.

The Court: All right. Recess until 10:00 o'clock tomorrow morning. Remember the admonition.

(Whereupon, at 4:25 o'clock p.m., a recess was taken until 10:00 o'clock a.m., Tuesday, May 27, 1947.) [177]

Los Angeles, California, Tuesday, May 27, 1947
10:00 A.M.

The Court: Is it stipulated that the defendants are present in person and by their counsel, and each juror is present and in his or her place?

Mr. Strong: So stipulated.

Mr. Robnett: Yes.

Mr. Katz: So stipulated.

ERNEST LINK

the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Strong:

Q. Mr. Link, you testified yesterday regarding some entries which you made on the books at the request of Mr. Ormont. Do you recall that?

A. Yes.

Q. I will ask you whether you at any time saw Mr. Ormont himself make entries on the books, which were not correct? A. Yes.

Mr. Robnett: I object to that as assuming something not in evidence and asking the conclusion of the witness as to their not being correct.

The Court: Yes, I think that is objectionable. The [181] objection will be sustained. Reframe your question.

(Testimony of Ernest Link.)

Q. (By Mr. Strong): Did you ever see Mr. Ormont make any entries on the books and records of the Acme Meat Company, during the years 1942 to 1944? A. Yes.

Q. When was that? A. In 1944?

Q. Approximately what part of the year?

A. In the months of October, November and December.

Q. What entries did you observe him make?

Mr. Katz: That is objected to, if the Court please, on behalf of the defendant Himmelfarb, as not binding upon him in any way, and hearsay as to him.

The Court: The objection will be sustained. I take it, it will not be necessary at each session of the court to renew the understanding had by counsel, that this is offered only presently as against the defendant Ormont?

Mr. Strong: At the present time the understanding is the same.

The Court: Very well.

Mr. Robnett: Thank you, your Honor.

The Witness: May I have the question again?

(Question read by the reporter.)

A. He changed the purchases of livestock, cattle.

Q. (By Mr. Strong): He changed them in what respect?

A. I had to report those according to the invoices which Mr. Ormont had given me for the subsidy program. Then he changed them later on in the office, in my presence. He increased the cost of those cattle.

(Testimony of Ernest Link.)

The Court: How many such entries did you make?

A. For all three months of September, October and November. That was done, as far as my recollection goes, in October, November and December.

Q. How many entries did you make?

A. That was in the subsidy—

Q. How many different times did you write down in the books?

A. On the bills—there were a number of bills, approximately from a half a dozen to a dozen. I couldn't exactly say the exact amount.

Q. Each month? A. No, in total.

Q. From a half a dozen to a dozen?

A. Yes.

Q. Did you change those yourself, or did he change the invoices?

A. He changed the invoices. [183]

Q. From which you copied into the books?

A. Yes.

Q. Is that the same incident you described yesterday? A. Not in detail.

Q. Is it relating to the same? A. Yes.

Q. Those are the same changes that you described yesterday? A. Yes.

Q. (By Mr. Strong): I had asked for any others or additional ones beyond those that you testified to yesterday.

A. I understand I testified yesterday to—

Q. You remember what you testified to yesterday. That is why I prefaced my question. Do you

(Testimony of Ernest Link.)

recall them, or is this in addition to the testimony you gave yesterday—part of the same transaction?

A. It is part of the same transaction.

Q. As far as you know from the books and records, or any other basis of knowledge you may have, was the Acme Meat Company operated on a calendar year basis, or a fiscal year basis during the years 1942, 1943 and 1944?

Mr. Katz: Objected to, if the Court please, as to that question, insofar as the defendant Himmelfarb is concerned—

Mr. Strong: We have agreed as to each question. I have [184] not mentioned his name.

The Court: The objection will be sustained. The jury will receive this evidence as against the defendant Ormont only, and disregard it as to the defendant Himmelfarb.

The Witness: On a calendar year basis.

The Court: It will be assumed that objection will be made to each question, and the same ruling made, as to each one, unless the prosecutor avows that it is offered for connecting the defendant Himmelfarb, or it is obvious from the question that it applies to the defendant Himmelfarb. [185]

Q. (By Mr. Strong): On what basis?

A. On the calendar year basis.

Q. On what basis were the books of the Acme Meat Company kept for the years 1942, '43 and '44?

A. On a calendar year basis.

Mr. Strong: That is all.

The Court: Cross-examine.